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PRESIDENTIAL DISCRETION AND MINISTERIAL INFLATION: A NORMATIVE CRITIQUE OF THE AMENDMENT TO INDONESIA'S STATE MINISTRY LAW

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Abstract: The amendment to Article 15 of the State Ministry Law, which eliminated the cap on ministries and replaced it with "as needed by the President," has introduced legal uncertainty in Indonesia. This change adversely affected the structuring and formation of state ministries. This study analyzes the factors influencing ministry formation and aims to reconstruct the regulatory framework by reinstating limitations on the number of ministries to mitigate negative impacts. Using a normative legal method with statutory, conceptual, and historical approaches, this study identifies regulatory gaps. The findings reveal that the amendment to the State Ministry Law, particularly the revision of Article 15, which allows ministry numbers to be determined by presidential discretion, creates legal uncertainty. This fails to meet two key indicators of legal certainty theory - *lex stricta* and *lex certa* - leading to detrimental implications for ministry formation. This study recommends a judicial review of the amendments and advocates for reinstating a maximum limit on ministry numbers within the legal framework. This regulatory provision enhances legal certainty and prevents potential abuse of authority.

Keywords: *Legal Uncertainty, Presidential Discretion, Regulatory Limitation, State Ministry Formation*

Abstrak: Perubahan Pasal 15 Undang-Undang Kementerian Negara, yang menghapus batasan maksimal jumlah kementerian dan menggantinya dengan frasa "sesuai kebutuhan Presiden," telah menyebabkan ketidakpastian hukum di Indonesia. Perubahan ini berdampak negatif terhadap penataan dan pembentukan kementerian negara. Penelitian ini bertujuan menganalisis faktor pembentukan kementerian negara serta merekonstruksi kerangka regulasi dengan mengembalikan batasan jumlah kementerian untuk mengurangi dampak negatif. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan sejarah untuk mengidentifikasi celah regulasi. Temuan menunjukkan bahwa revisi Pasal 15 yang memungkinkan jumlah kementerian ditentukan sepenuhnya berdasarkan kebijakan Presiden menciptakan ketidakpastian hukum karena tidak memenuhi indikator *lex stricta* dan *lex certa*. Penelitian merekomendasikan judicial review terhadap perubahan Undang-Undang dan mendukung pemulihan batasan maksimal jumlah kementerian untuk meningkatkan kepastian hukum dan melindungi dari penyalahgunaan wewenang.

Kata kunci: *Diskresi Presiden, Ketidakpastian Hukum, Pembatasan Regulasi, Pembentukan Kementerian Negara*

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INTRODUCTION

The President, as both the Head of Government and Head of State in a presidential system, holds numerous complex duties and authorities that cannot be executed single-handedly. To facilitate governance and state administration, the President is assisted by the state apparatus, specifically the Executive. This necessity is based on the fact that the Vice President, while serving as the President's primary deputy, does not directly engage in daily management of governmental affairs. One of the key powers held by the President as the Head of Government in a presidential system is the authority to appoint and structure the cabinet, including state ministers. This power falls within the category of executive authority, commonly referred to as the president's prerogative rights.[1] In line with this explanation, the Constitution, through the provisions of Article 17(1), facilitates the President's governance by granting legal legitimacy to the organization of ministries. This legal framework ensures that ministries can effectively assist in the administration and management of government and state affairs.

These ministers are appointed and dismissed by the President in accordance with their political policies, as stipulated in Article 17(2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Additionally, the appointed ministers are assigned responsibilities for specific governmental affairs in accordance with their primary duties and functions, as outlined in Article 17(3) of the 1945 Constitution. Based on these provisions, ministers play a crucial role in governance and are tasked with supporting the President in managing state affairs. Further regulations regarding state ministries are elaborated in Law No. 39 of 2008 on State Ministries,[2] which has recently undergone amendments and restructuring under the provisions of Law No. 61 of 2024 on Amendments to Law No. 39 of 2008 on State Ministries (hereinafter referred to as the State Ministry Law, Law No. 39/2008, and/or Law No. 61/2024).

The political dynamics influencing the President's prerogative rights in forming the state ministry cabinet consistently lead to logical consequences regarding the number of ministries, which, in turn, have far-reaching implications. This evolving pattern makes it an intriguing subject for in-depth examination and analysis, particularly during regime transitions or the election of a new President and Vice President in each term. This issue has become even more critical following the amendment of the State Ministry Law, now codified as Law No. 61 of 2024, which

[1] Isti Anjelina Mohamad, Erman I. Rahim, and Abdul Hamid Tome, "Rekonstruksi Pengisian Jabatan Kementerian Negara Di Indonesisa Melalui Perbandingan Di Negara Lain," *GANEC SWARA* 18, no. 2 (June 6, 2024): 624, https://doi.org/10.35327/gara.v18i2.839.

[2] Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara, Lembaran Negara Republik Indonesia Tahun 2008 Nomor 166, Tambahan Lembaran Negara Republik Indonesia Nomor 4916.

eliminates the maximum limitation on the number of state ministries, allowing it to be determined solely by the President's discretion.[3]

Several studies have highlighted the regulatory aspects of the formation and structuring of state ministries. For instance, research conducted by Mohammad examined the reconstruction of the appointment process for state ministry positions in Indonesia through comparative studies with other countries.[4] There is also a study conducted by Liu, which discusses the position of state ministries in the government system of the republic of Indonesia.[5] Additionally, Noviantika and Taufiq examined the existence of state ministries in the presidential system based on Law No. 39 of 2008 on state ministries.[6] Furthermore, an international study by Klein on cabinet formation in parliamentary systems–a comparative analysis of cabinet structures in the UK and Germany–offers insights into the institutional factors that shape cabinet formation in parliamentary democracies.[7] However, these previous studies remain partial in scope and have not thoroughly explored the formation and structuring of the number of state ministries, particularly in light of the amendment to the State Ministry Law, which eliminated the maximum limitation on the number of ministries, allowing it to be determined based on the President's discretion.[8] The gap identified in these previous studies is the lack of discussion regarding the structuring of the number of ministries, especially after the amendment to the State Ministry Law. This study offers a new contribution by providing practical solutions for the formation and structuring of state ministries in the future.

The main issue to be examined arises from the House of Representatives' decision to approve the amendment to the State Ministry Law, specifically the revision of Article 15, which previously set a maximum limit of 34 ministries but has now been changed to "as needed by the President," thereby eliminating any restrictions on the number of ministries. The logical consequence of this change is the emergence of legal

[3] Agun Gunandjar Sudarsa, "Kementerian Negara Sebuah Pemikiran," *Gagas Bisnis. Jakarta*, 19AD.

[4] Mohamad, Rahim, and Tome, "Rekonstruksi Pengisian Jabatan Kementerian Negara Di Indonesisa Melalui Perbandingan Di Negara Lain."

[5] Christin Nathania Liu, "Kedudukan Kementerian Negara Dalam Sistem Pemerintahan Negara Republik Indonesia," *LEX PRIVATUM* 10, no. 5 (August 1, 2022), https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/42825.

[6] Tria Noviantika M. Shofwan Taufiq, "Eksistensi Kementerian Negara Dalam Sistem Presidensil Berdasarkan Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara," *Muhammadiyah Law Review* 5, no. 1 (February 11, 2021): 1, https://doi.org/10.24127/lr.v5i1.1496.

[7] Julia Fleischer, "Power Resources of Parliamentary Executives: Policy Advice in the UK and Germany," *West European Politics* 32, no. 1 (January 2009): 196–214, https://doi.org/10.1080/01402380802509941.

[8] Lalu Arasistawa, "Philosophical and Historical Foundations of the Establishment of Blasphemy Articles in the Criminal Code (KUHP)," *Peradaban Hukum Nusantara* 1, no. 2 (2024): 66–83, https://doi.org/10.62193/h2vsk889.

uncertainty, allowing the President to establish an unlimited number of ministries according to their needs and whims. This has the potential to create various negative impacts in the future, such as increased bureaucratic complexity within ministries, rising state expenditures if the number of ministries expands beyond the actual capacity of government affairs, and disorganized, highly complex inter-ministerial coordination, which would inevitably affect public policy, ministerial roles, and overall performance. This raises concerns about large-scale political appointments by the president, particularly within the dynamics of political bargaining. Past events have demonstrated how political considerations influence presidential decisions in appointing ministers to the cabinet.

In the latest cabinet formed by President Prabowo, there has been a significant increase in the number of state ministries and an estimated rise in budget allocations compared to the previous cabinet. According to Databoks, during President Jokowi's administration, the cabinet consisted of 34 ministers and 17 deputy ministers, with ministerial salaries and allowances amounting to IDR 61.2 billion per year, deputy minister salaries and allowances reaching IDR 20.4 billion per year, and operational budgets for ministers and deputy ministers totaling IDR 306 billion annually. Consequently, the total budget allocated for the cabinet under President Jokowi was IDR 387 billion per year.

However, following the amendment to the State Ministry Law, the total budget for President Prabowo's cabinet has nearly doubled compared with the previous administration. Under President Prabowo, the cabinet consists of 49 ministers and 17 deputy ministers. Ministerial salaries and allowances have increased to IDR 88.2 billion per year, while deputy minister salaries and allowances now amount to IDR 70.8 billion per year. Additionally, the operational budget for ministers and deputy ministers has risen sharply to IDR 648 billion per year, bringing the total annual budget to IDR 777 billion.[9]

The gap in these studies is the absence of a discussion on how changes in the State Ministry Law, particularly the amendment to Article 15, might influence the formation and structuring of state ministries. This study addresses this gap by examining the impact of the amendment, which grants the President the authority to form ministries solely at his discretion, potentially leading to legal uncertainty. Such uncertainty could have significant consequences, including increased bureaucratic complexity, higher state expenditures, and problematic inter-ministerial coordination,

[9] Nabilah Muhammad, "Celios: Kabinet Gemuk Prabowo Berpotensi Boros Anggaran | Databoks," 2024, https://databoks.katadata.co.id/politik/statistik/6719f5c032e95/celios-kabinet-gemuk-prabowo-berpotensi-boros-anggaran.

which might ultimately affect the efficacy of government policy and administrative performance.

Furthermore, this shift raises concerns about the increasing influence of political appointments, especially regarding political bargaining. Historical practices have shown how political considerations can heavily influence presidential decisions regarding ministerial appointments. In the latest cabinet formed under President Prabowo, there has been a substantial increase in the number of ministries and their associated financial allocations, prompting concerns about the potential consequences of these changes.

This study employs the normative legal research method, which involves the examination, review, and analysis of legal literature, including statutory regulations and legal concepts pertinent to the regulation of the formation of State ministries. This study adopts statutory, conceptual, and historical approaches to provide a comprehensive analysis of the legal framework governing the establishment and structuring of state ministries.[10] Incorporating input from policymakers or experts in state administration, such as interviews or consultations, could provide richer practical insights into the implementation of these changes. This empirical angle adds credibility and depth to the findings and recommendations of the study.

The statutory approach is used to examine the regulation of State Ministries, particularly after the amendment to the State Ministry Law, as stipulated in Law No. 61 of 2024 on Amendments to Law No. 39 of 2008 on State Ministries. Meanwhile, a conceptual approach is applied to analyze the formation and structuring of state ministries, identifying gaps and deficiencies in the existing framework and proposing an ideal solution through a refined concept of ministerial formation and structuring. The historical approach is employed to study and reflect on past practices in the formation and structuring of ministries, identifying factors, strengths, and weaknesses in previous cabinet formations, to provide insights for future improvements.[11]

This study uses secondary data sources, including primary, secondary, and tertiary legal materials.[12] The analytical technique employed is qualitative juridical analysis, which generates descriptive-analytical information. The gathered data were used to depict existing facts within the study, facilitating the formulation of

[10] Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media* 8 (2020).

[11] Achmad Zuhdi and Ari Ade Kamula, "Legitimasi Hukum Asing Sebagai Pertimbangan Putusan Oleh Mahkamah Konstitusi: Perbandingan Antara Indonesia Dan Afrika Selatan," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 2 (June 20, 2024): 272–96, https://doi.org/10.33474/yur.v7i2.21634.

[12] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2008).

conclusions and recommendations through deductive reasoning, which involves drawing conclusions from general premises to specific cases. Furthermore, this qualitative legal analysis entails examining statutory regulations pertinent to the research problem and correlating them with the legal principles and theories that form the analytical framework. This approach was used to derive conclusions, propose solutions, and develop an ideal conceptual framework concerning the issues under discussion.

DISCUSSION

1.1 Restoration of Regulatory Limitations on the Formation and Arrangement of the Number of State Ministries by the President

The formation and structuring of State Ministries have continuously varied since their initial establishment during the post-independence era. These variations occurred across different constitutional periods, including the 1945 Constitution (UUD 1945), the 1949 Federal Constitution (Konstitusi RIS 1949), the 1950 Provisional Constitution (UUDS 1950), the reinstated 1945 Constitution following the Presidential Decree of July 5, 1959, and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) after the first to fourth amendments.[13] The structuring of the number of State Ministries has varied in each cabinet formation period, except during the administrations of Presidents Susilo Bambang Yudhoyono and Joko Widodo, where the number of ministries remained consistent throughout their leadership. This consistency resulted from the enactment of Law No. 39 of 2008 on State Ministries during President Susilo Bambang Yudhoyono's first term, which, under Article 15, established a maximum of 34 state ministries.

This shift opens up greater opportunities for potential misuse, such as excessive political appointments, escalating budget allocations, arbitrary cabinet reshuffles, and other issues that have historically plagued Indonesia. For example, during the formation of President Joko Widodo's second-term cabinet, several ministerial posts were distributed to political allies with limited administrative experience, raising concerns about the erosion of merit-based governance.[14] Additionally, the Audit Board of the Republic of Indonesia reported inefficiencies in budget realization among

[13] Naskah Akademik Rancangan Undang-Undang Nomor 61 Tahun 2024 Tentang Perubahan Atas Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara. Hlm. 9-11.

[14] Novianti Setuningsih, "Deretan Menteri Jokowi Yang Pernah Lontarkan Pernyataan Kontroversial Halaman All - Kompas.Com," accessed May 21, 2025, https://nasional.kompas.com/read/2024/07/04/17312551/deretan-menteri-jokowi-yang-pernah-lontarkan-pernyataan-kontroversial?page=all.

overlapping ministries, particularly in the health and social welfare programs.[15] The removal of these institutional limitations raises empirical concerns about the potential for political favoritism, uncontrolled government expansion, and administrative fragmentation, all of which may hinder policy implementation and disrupt the effectiveness of state administration.

During the cabinet formation periods from the era of President Soekarno to the early administration of President Susilo Bambang Yudhoyono, the formation and structuring of State Ministries were not explicitly and systematically regulated through statutory instruments. This institutional gap is evidenced by the absence of legal provisions in the 1945 Constitution (prior to the 2000 amendments) and the lack of comprehensive statutory law specifically governing ministerial structuring until the enactment of Law No. 39 of 2008 on State Ministries. Consequently, each president exercised wide discretion in determining the number and configuration of ministries, often driven by political considerations rather than administrative design. The absence of regulatory clarity led to variations in cabinet composition and ministerial nomenclature across successive administrations (cf. Article 17 of the 1945 Constitution and elucidation in Law No. 39 of 2008, particularly articles 3–5). This legal vacuum has contributed to multiple institutional challenges, including patronage politics, overlapping responsibilities, and increased bureaucratic inefficiencies, highlighting the importance of a standardized legal framework to ensure accountable and efficient state administration.

From the perspective of a constitutional state governed by the rule of law, one of the fundamental elements or key indicators of a law-based state, as proposed by Dicey, is the principle of legal supremacy.[16] Legal supremacy asserts that the law holds the highest authority in the state and that no entity within the state, including the government itself, is above the law. Consequently, it is the law that governs the state rather than individuals or political power. The logical consequence of this principle is that the law must reign supreme, not human will. This means that individuals and state authorities must submit to and comply with the law.[17] As the primary instrument for limiting state power, the law serves to regulate governmental actions and maintain public order. Therefore, one of the fundamental prerequisites for ensuring that the law fulfills its function is that it must provide legal certainty.[18]

[15] BPK RI, "Ikhtisar Hasil Pemeriksaan Semester I Tahun 2022," 2022, https://www.bpk.go.id/ihps/2022/I.

[16] F.A. Hayek, *The Constitution of Liberty: The Definitive Edition*, ed. Ronald Hamowy, 1st ed. (Routledge, 2020), https://doi.org/10.4324/9781138400047.

[17] Moh Fadli and Syofyan Hadi, "Kepastian Hukum Perspektif Teoritik," *Nuswantara Media Utama*, 2023.

[18] Fadli and Hadi.

Before the enactment of Law No. 39 of 2008 on State Ministries, the formation and structuring of State Ministries faced not only legal uncertainty but also a legal vacuum, as there were no explicit statutory provisions governing the matter. However, with the promulgation of Law No. 39 of 2008 at the end of President Susilo Bambang Yudhoyono's first term, the formation, structuring, and dismissal of ministries gained a clear legal foundation and normative framework, ensuring legal certainty. The establishment of legal certainty in ministerial structuring significantly influences the scope of authority, accountability, and procedural clarity in the formation and organization of ministries. This framework provided a more structured and legally grounded approach to ministerial governance, ensuring that the President's discretion in forming ministries was exercised within defined legal parameters rather than being left to unrestricted political considerations.

In the era of President Prabowo Subianto, the formation and structuring of State Ministries appeared to have reverted to the practices of the past. This shift is primarily due to the amendment of the State Ministry Law, as stipulated in Law No. 61 of 2024 on the Amendments to Law No. 39 of 2008 on State Ministries. One of the most significant changes in this amendment is the revision of Article 15, which eliminates the maximum limitation of 34 ministries and replaces it with a provision stating that the number of ministries is determined based on the president's needs. This change effectively removed any legal limitations on the number of ministries, leading to legal uncertainty in the formation and structuring of State Ministries. The absence of a clear regulatory limit raises concerns about potential inconsistencies and governance instability, particularly in the formation of the current "Kabinet Merah Putih" and future cabinets. The removal of this restriction may also pave the way for political maneuvering, excessive government expansion, and inefficiencies in bureaucratic coordination, ultimately affecting public administration and state governance effectiveness.

Based on an academic study prepared by the National Research and Innovation Agency (BRIN) in collaboration with the House of Representatives (DPR RI), as documented in the Academic Draft Bill on the Amendment to Law Number 39 of 2008 concerning State Ministries, two principal aspects were highlighted in the assessment of Law No. 39 of 2008: substantive and structural-legal. In this evaluation, the DPR identified four core issues within the substantive framework of the law, which were considered to lack normative clarity and legislative strength.[19] These concerns include the absence of clear limitations on ministerial functions, the misalignment of the organizational structure with governance needs, and the insufficient regulation of

[19] M. Shofwan Taufiq, "Eksistensi Kementerian Negara Dalam Sistem Presidensil Berdasarkan Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara."

procedures concerning ministerial appointment and dismissal. These gaps have facilitated excessive presidential flexibility, allowing greater political accommodation in cabinet formation. The report also noted overlapping responsibilities between ministries and non-ministerial government institutions (LPNK), with the LPNK often regarded as a structural burden that complicates inter-agency coordination and adds inefficiency to the state administration.

In the monitoring and evaluation of the legal aspect, the House of Representatives (DPR) provided a key evaluation point regarding Law No. 39 of 2008 on State Ministries, which, according to researchers, is also problematic and lacks a strong legal basis:

> *"The overlapping implementation of governmental affairs among ministries, where the maximum limit of 34 ministries is considered excessive, has resulted in intersecting authorities between ministries. This overlap has led to conflicting responsibilities and inefficiencies, creating horizontal and vertical barriers in the execution of governmental functions"*

The monitoring and evaluation conducted by the House of Representatives (DPR), which was later formalized into an academic study evaluating the implementation of Law No. 39 of 2008 on State Ministries, formed the basis for preparing the Academic Manuscript of the Draft Bill No. 61 of 2024 concerning Amendments to Law No. 39 of 2008. This academic manuscript, as defined under Article 43 of Law No. 15 of 2019 on Lawmaking (Pembentukan Peraturan Perundang-Undangan), is a scientific document prepared to justify and provide theoretical and empirical foundations for drafting a law. The principal argument behind the manuscript and subsequent draft legislation was to revise Article 15 of Law No. 39 of 2008, which previously imposed a maximum limit on the number of state ministries. The drafters contended that this cap restricted the President's flexibility in shaping the cabinet to align with governance priorities. Therefore, the removal of this limitation was proposed to enable ministries to be structured more dynamically according to the evolving needs and vision of the elected administration.

2.2 Legal Certainty and Implications of Changes to Article 15 of the Law on State Ministries

Academic Draft Bill on the Amendment to Law Number 39 of 2008 concerning State Ministries, collaboratively developed by the Legislative Body of the House of Representatives (DPR RI) and the National Research and Innovation Agency (BRIN) in 2023. This academic document served as the main justification for revising Article 15, which initially set a cap of 34 ministries. The amendment suggested replacing this

limitation with the phrase "as needed by the President" (sesuai kebutuhan Presiden), thereby allowing discretionary ministerial structuring. However, the rationale in the academic manuscript does not address the potential risks of unchecked executive power, legal ambiguity and administrative inefficiency. As highlighted in the academic draft, the primary aim was to enhance flexibility in achieving the elected President's vision and mission; however, this reasoning overlooks the fundamental importance of legal certainty in administrative designs. The absence of a clearly defined mechanism for justification and evaluation raises significant questions regarding the amendment's normative coherence and governance impact.

First, if the primary substantive reason for monitoring and evaluating the State Ministry Law in academic studies is based on the argument that there is "no clear delineation of each ministry's functions," the appropriate course of action should be to establish clearer limitations on ministerial functions, rather than amending Article 15 to remove the limit on the number of ministries and allowing it to be determined based on the President's discretion. Such an amendment creates opportunities for ambiguity, making the boundaries of ministerial functions more general and less well-defined. Articles 4 and 5 of Law No. 39 of 2008 already provide a framework for ministerial responsibilities. Article 4, paragraphs (1) and (2), sections (a), (b), and (c), explicitly state that ministers oversee specific governmental affairs, which include matters whose nomenclature is explicitly regulated and mentioned in the 1945 Constitution of the Republic of Indonesia, matters whose scope is defined within the 1945 Constitution, and matters that focus on refining, coordinating, and synchronizing government programs. This legal framework already establishes clear categories of ministerial functions, making the removal of the numerical limit on ministries in Article 15 unnecessary and counterproductive, as it further blurs the functional boundaries that the academic study initially aimed to clarify."

Furthermore, Article 5, paragraphs (1), (2), and (3) of Law No. 39 of 2008 on State Ministries explicitly outlines governmental affairs as referred to in Article 4, paragraph (2), sections (a), (b), and (c) of the same law. The ministerial affairs defined and elaborated in Articles 4 and 5 of the State Ministry Law already serve as clear limitations on the functions of each ministry. These provisions establish specific boundaries and responsibilities, ensuring that each ministry operates within a defined scope, thereby making the argument for further deregulation unnecessary.

Thus, in essence, Articles 4 and 5 of Law No. 39 of 2008 on State Ministries already accommodate the limitation of each ministry's functions, even though they are not rigidly regulated. The logical consequence of explicitly defining ministerial affairs is the existence of Article 15 of Law No. 39 of 2008, which sets a maximum limit of 34 ministries in the government. If this maximum limitation on the number of ministries is removed and replaced with a provision allowing it to be determined

based on the President's needs, as stipulated in Law No. 61 of 2024 on Amendments to Law No. 39 of 2008, it would result in overlapping functions between ministries and further ambiguity. This would ultimately lead to legal uncertainty, as the lack of a fixed limit would blur the functional distinctions between ministries, thereby reducing efficiency and accountability in governance.

Second, if the second substantive reason in the academic study monitoring and evaluating the State Ministry Law is based on the argument that the organizational structure is irrelevant, then, logically, by removing the maximum limit of 34 ministries and replacing it with a provision allowing the President to determine the number of ministries as needed, the organizational structure of State Ministries becomes even more irrelevant. This change allows the President to continuously expand and restructure the organization, leading to a more complex and potentially inefficient bureaucratic system than before. This issue is evident in the formation and structuring of ministries under President Prabowo Subianto, where the total number of ministries reached 48, excluding deputy ministers and the organizational structure beneath them. The expansion of ministries without clear limitations risks creating overlapping functions, excessive administrative costs, and inefficiencies in governance, contradicting the original objective of ensuring a streamlined and effective ministerial structure in the first place.

Third, if the third substantive reason in the academic study monitoring and evaluating the State Ministry Law is based on the argument that the regulation regarding the appointment and dismissal of ministers is irrelevant, thereby granting the President excessive flexibility and opening opportunities for political bargaining in ministerial appointments with coalition parties", then, by removing the maximum limit of 34 ministries and replacing it with a provision allowing the President to determine the number of ministries based on their needs, the opportunity for political bargaining in ministerial appointments increases significantly.

This concern is not merely theoretical in nature. For example, during the formation of the Indonesia Onward Cabinet (*Kabinet Indonesia Maju*), several ministries were reportedly assigned to political allies despite their limited administrative experience, raising questions about the meritocratic basis for such appointments.[20] Furthermore, the overlapping mandates between the Ministry of Health (*Kemenkes*) and the Coordinating Ministry for Human Development and Cultural Affairs (*Kemenko* PMK) during the COVID-19 response illustrated how

[20] Egi Adyatama, "Politikus PDIP Effendi Simbolon Sebut Jokowi Salah Susun Kabinet | tempo.co," Tempo, February 8, 2020, https://www.tempo.co/politik/politikus-pdip-effendi-simbolon-sebut-jokowi-salah-susun-kabinet-655724.

ambiguous ministerial roles led to delayed actions and uncoordinated policies, ultimately affecting public health outcomes.[21]

This change provides the President with unrestricted prerogative power in the formation and structuring of ministries, allowing for a greater distribution of ministerial positions to coalition parties as part of political negotiations. This issue is even more concerning when analyzing past ministerial formations, which lacked a clear legal framework governing the formation and structuring of ministries, as discussed in the first research problem. During these periods, political factors played a dominant role in determining the composition of the cabinet, reinforcing the concern that ministerial appointments may prioritize political interests over governance efficiency. By removing legal limitations, the formation of ministries risks becoming a political instrument rather than a mechanism of effective state administration.

Academic Draft Bill on the Amendment to Law Number 39 of 2008 concerning State Ministries, compiled by the Legislative Body of the House of Representatives (DPR RI) in collaboration with the National Research and Innovation Agency (BRIN) in 2023. This Academic Draft Bill serves as the formal rationale for amending Article 15 of the State Ministry Law. The revision proposed the elimination of the numerical cap of 34 ministries, replacing it with the provision that the number of ministries would be determined as needed by the President. However, the arguments presented in this academic manuscript—particularly those justifying the need for unregulated executive discretion in cabinet formation—lack empirical grounding and conceptual clarity. The document primarily emphasized enhancing presidential flexibility without adequately addressing concerns related to legal certainty, potential institutional overlap, or the risks of excessive politicization in ministerial appointments. The reasoning used to justify the amendment raises critical legal and administrative concerns.

A salient example of this pattern can be observed in the composition of President Joko Widodo's second-term cabinet, the Indonesia Onward Cabinet. Reports indicate that several strategic ministries were allocated to individuals affiliated with political parties whose qualifications raised public concern. For instance, appointments to the Ministry of Youth and Sports and the Ministry of Religious Affairs sparked public debate over the appointees' limited professional experience in relevant policy areas.[22] Although constitutionally legitimate, such

[21] Didi Rustandi, "Menko PMK Muhadjir Effendy Penanganan Pandemi Tak Bisa Dilakukan Dari Belakang Meja Saja," https://rm.id/, accessed May 8, 2025, https://rm.id/baca-berita/government-action/84298/menko-pmk-muhadjir-effendy-penanganan-pandemi-tak-bisa-dilakukan-dari-belakang-meja-saja.

[22] Kompas Cyber Media, "7 Menteri Jokowi yang Dianggap Kontroversi, Siapa Saja Mereka? Halaman all," KOMPAS.com, October 25, 2019,

practices risk diminishing ministerial performance by placing individuals in roles that exceed their technical capacity.

Moreover, this distribution of power contributes to a culture in which ministries are perceived not as instruments of public administration but as extensions of party influence. As highlighted by Mietzner, the absence of institutionalized meritocracy fosters inefficiency and may facilitate the entrenchment of corrupt practices.[23] The use of ministries as political spoils tends to blur accountability lines and may compromise bureaucratic neutrality. Over time, the entrenchment of this norm threatens to delegitimize governance by undermining public trust in the integrity of administrative institutions.

Political patronage may also distort policy priorities and compromise institutional performance, particularly when executive appointments are made based on partisan allegiance rather than on administrative merit. Mietzner argues that in many Southeast Asian democracies, including Indonesia, political considerations often dominate cabinet formation, resulting in the appointment of ministers with limited expertise in their respective policy areas.[24] These individuals tend to pursue agendas that align with party objectives rather than broader national interests. This misalignment frequently leads to fragmented programming, inefficient resource distribution, and challenges in synchronizing multisectoral initiatives. Empirical observations during the Post-Reform Era in Indonesia suggest that such patterns have contributed to the entrenchment of executive inefficiency and erosion of public trust in ministerial institutions.[25] In the absence of institutionalized mechanisms for performance evaluation or qualification-based recruitment, these practices risk being normalized. To safeguard governance integrity, structural reforms must focus on recalibrating coalition dynamics through transparent appointment criteria and periodic assessments of the performance of ministers. These measures are essential not only to uphold the principles of accountability and competence but also to ensure that the executive branch operates in alignment with long-term developmental goals rather than short-term political expediency.

https://www.kompas.com/tren/read/2019/10/25/095012665/7-menteri-jokowi-yang-dianggap-kontroversi-siapa-saja-mereka.

[23] Marcus Mietzner and Jun Honna, "Elite Opposition and Popular Rejection: The Failure of Presidential Term Limit Evasion in Widodo's Indonesia," *South East Asia Research* 31, no. 2 (April 3, 2023): 115–31, https://doi.org/10.1080/0967828X.2023.2236542.

[24] Marcus Mietzner, "Authoritarian Innovations in Indonesia: Electoral Narrowing, Identity Politics and Executive Illiberalism," *Democratization* 27, no. 6 (August 17, 2020): 1021–36, https://doi.org/10.1080/13510347.2019.1704266.

[25] Eve Warburton, "Jokowi and the New Developmentalism," *Bulletin of Indonesian Economic Studies* 52, no. 3 (September 2016): 297–320, https://doi.org/10.1080/00074918.2016.1249262.

Political patronage may also distort policy priorities and erode institutional performance, particularly when ministerial appointments are based on political loyalty rather than professional merit. As Mietzner explains, such appointments often result in fragmented policy agendas, reduced administrative coherence and weakened public accountability mechanisms.[26] Ministers who lack substantive expertise in their assigned sectors may advance agendas that are more closely aligned with party interests than with national development goals. This misalignment contributes to programmatic inconsistencies, inefficient budget utilization, and challenges in coordinating multisector initiatives. Without institutional safeguards, such as performance audits or qualification benchmarks, these politically motivated appointments tend to persist without evaluation or reform. Empirical evidence from Indonesia's post-Reformasi period indicates that coalition-based cabinet distribution frequently prioritizes political accommodation over governance.[27] To address these systemic vulnerabilities, governance frameworks should incorporate merit-based selection procedures, transparent appointment standards, and periodic performance reviews to ensure that executive power remains responsive, accountable, and aligned with public service requirements.

The unchecked expansion of ministerial institutions often leads to the proliferation of bureaucratic layers that complicate governance coordination and reduce administrative efficiency. Bureaucratic complexity, in this context, refers to overlapping mandates, redundancies in decision-making processes, and increased inter-agency friction that arise when too many ministries operate without a clearly defined scope of authority. This phenomenon becomes particularly acute when ministerial roles are formed not through careful functional assessment but as a product of discretionary political decisions. The absence of a normative limit, as previously regulated under Article 15 of Law No. 39 of 2008, enables arbitrary expansion, which can strain the administrative machinery.

A pertinent example of such dysfunction occurred in Indonesia’s response to the COVID-19 pandemic. The overlapping responsibilities of the Ministry of Health (Kemenkes) and the Coordinating Ministry for Human Development and Cultural Affairs (Kemenko PMK) create significant coordination challenges. As noted by the Indonesian Center for Strategic and International Studies (CSIS), the lack of a single command structure in health policy delayed vaccine distribution strategies and

26

[27] Eve Warburton, “Jokowi and the New Developmentalism,” *Bulletin of Indonesian Economic Studies* 52, no. 3 (September 2016): 297–320, https://doi.org/10.1080/00074918.2016.1249262.

complicated the public health messaging.[28] The duplication of efforts and fragmented jurisdiction over health-related functions weakened the overall response to the crisis. This case illustrates the consequences of diffuse ministerial authority and emphasizes the importance of a coherent institutional design.

Moreover, the presence of multiple ministries with interrelated functions often leads to "turf wars," in which ministries compete rather than collaborate. Such institutional rivalry undermines policy coherence, wastes public funds through duplicated programs, and generates administrative confusion, especially at the regional implementation level. The 2022 report from the Audit Board of the Republic of Indonesia (BPK) also highlighted inconsistencies in program execution between ministries with similar development mandates, leading to inefficiencies in budget utilization and outcome monitoring.[29]

Rather than promoting effective service delivery, excessive ministerial segmentation often results in slower policy execution because of elongated chains of command. This situation not only frustrates bureaucratic responsiveness but also dilutes the accountability of the government. When multiple ministries share responsibility for similar domains, it becomes difficult to trace performance failures to specific institutions, thereby weakening internal and external oversight mechanisms. As the government continues to expand its executive apparatus without instituting parallel governance reforms, the risks of systemic dysfunction and administrative inertia are likely to intensify.

Fourth, if the fourth substantive reason in the academic study monitoring and evaluating the State Ministry Law is based on the argument that there is overlap between ministries and non-ministerial government agencies (LPNK), and that LPNK increases the burden on the state," then, by removing the maximum limit of 34 ministries and replacing it with a provision allowing the President to determine the number of ministries as needed, the burden on the state will only increase further. This change also raises the risk of overlapping functions between ministries and non-ministerial government agencies (LPNK), especially if the President expands and restructures the number of ministries without clear limitations on their authority. Rather than solving the issue of bureaucratic inefficiency and redundancy, this amendment exacerbates the problem, leading to greater administrative costs, responsibility duplication, and governance inefficiencies. If the concern was truly to reduce overlaps and state burdens, the more appropriate solution would have been to

[28] CSIS, "Menakar Keberhasilan PSBB Dalam Penanganan COVID-19: Data Dan Peringatan Bagi Pemerintah Daerah," 2021, https://www.csis.or.id/publication/menakar-keberhasilan-psbb-dalam-penanganan-covid-19-data-dan-peringatan-bagi-pemerintah-daerah/.

[29] BPK, "Badan Pemeriksa Keuangan Republik Indonesia," accessed November 7, 2024, https://www.bpk.go.id/news/bpk-dan-kejaksaan-agung-bahas-asuransi-jiwasraya.

restructure existing ministries and agencies rather than removing the legal limitation on the number of ministries altogether.

If the legal structural aspect in the academic study monitoring and evaluating the State Ministry Law argues that overlapping governmental affairs among ministries occur because the maximum limit of 34 ministries is considered excessive, leading to authority conflicts and inefficiencies, this reasoning is fundamentally flawed. By removing the limit on the number of ministries, rather than solving the issue of overlapping responsibilities, the situation becomes even more complex. Increasing the number of ministries does not eliminate redundancy but instead creates more intersections of authority, making bureaucratic coordination more difficult and inefficient. Instead of addressing the problem, the abolition of the limit on ministries increases fragmentation and further complicates governance, contradicting the objective of improving efficiency. By removing the maximum limit of 34 ministries and replacing it with a provision allowing the President to determine the number of ministries as needed, the logical consequence will be an even greater and more widespread overlap in the administration of government affairs among ministries.

The intersections of authority between ministries, which previously caused inefficiencies and obstacles, will increase significantly if the President expands and restructures ministries beyond previous limitations. This concern is already evident in the formation of ministries under President Prabowo Subianto, where the total number of ministries has reached 48, significantly exceeding the previous limit of 34 ministries, as stipulated in Article 15 of the State Ministry Law before its amendment. The expansion of ministries into a larger and more bloated structure creates greater inefficiencies, making coordination more complex and increasing the risk of bureaucratic stagnation rather than improving governance effectiveness.

However, if the justification for drafting the Academic Draft Bill on the Amendment to Law Number 39 of 2008 concerning State Ministries compiled by the Legislative Body of the DPR RI in collaboration with the National Research and Innovation Agency (BRIN) in 2023 is to support the revision of Article 15 by arguing that the limitation of 34 ministries hinders the optimal implementation of the President's vision and mission, then this rationale is debatable. Article 15 of Law No. 39 of 2008, which imposes a normative ceiling on the number of ministries, is a regulatory mechanism intended to ensure structural efficiency and avoid excessive discretion. Removing this ceiling without embedding evaluation criteria may lead to uncontrolled expansion and diminished legal clarity. Moreover, the Academic Draft Bill also notes that this revision is informed by historical cases in which dissolved ministries during prior administrations resulted in bureaucratic disruption, reallocation issues, and policy discontinuity. While this historical context is relevant, the proposed amendment does not introduce adequate procedural safeguards to

prevent similar inefficiencies from occurring. A more balanced approach would preserve normative limits while integrating adaptive policy instruments through structured institutional review and performance-based justification.

In light of this context and rationale, there appears to be no immediate necessity to amend the State Ministry Law, particularly regarding eliminating the maximum limit on the number of ministries stipulated in Article 15 and substituting it with a provision that allows the number of ministries to be determined according to the President's requirements. Such a modification, by abolishing the maximum limit and permitting the restructuring of ministries at the President's discretion, would effectively revert to historical practices concerning the establishment and organization of ministries. This could enable the President to create ministries arbitrarily, potentially resulting in the recurrence of previously identified adverse outcomes such as overlapping functions, political patronage, and bureaucratic inefficiencies.

Based on the analysis presented in the Academic Draft Bill on the Amendment to Law Number 39 of 2008 concerning State Ministries, prepared by the Legislative Body of the House of Representatives (DPR RI) in collaboration with the National Research and Innovation Agency (BRIN) in 2023, it can be concluded that legal uncertainty arises from the amendment to Article 15 of the State Ministry Law. This article originally established a normative limit of 34 ministries but has since been amended to allow the number of ministries to be determined based solely on the president's discretion. The uncertainty generated by this change stems largely from the elimination of the numerical limit, which renders the structuring of ministries vulnerable to multiple interpretations. This shift has several institutional implications, including the risk of overlapping governmental functions, increased political patronage, and administrative inefficiencies, all of which weaken the clarity, coherence, and stability of the overall governance framework. The use of the phrase "as needed by the President" in the revised Article 15 does not, according to this analysis, meet the two primary indicators of legal certainty: *lex certa* and *lex stricta*.

First, the phrase "as needed by the President" does not align with the *lex stricta* indicator. The *lex stricta* indicator means that the law must be binding and mandatory, leaving no room for broad interpretations or flexibility in its application.[30] The amendment to Article 15 of the State Ministry Law to state "as needed by the President" actually provides the President with greater flexibility to form ministries according to their own will, desires, and needs, which leads to the formation and structuring of ministries, essentially reverting to past practices with all their negative

[30] Herda Mardiana, Muhamad Amirulloh, and Pupung Faisal, "Hak Paten Sebagai Objek Jaminan Fidusia Berdasarkan Peraturan Perundang-Undangan Mengenai Jaminan Fidusia Dan Paten," *Jurnal Cakrawala Hukum* 11, no. 2 (2020): 177–86.

implications. These include the rise of patronage politics between the President and the coalition supporting the elected President, the increased bureaucratic complexity within ministries, and the escalating state expenditures if the President creates more ministries. Additionally, disorganization in ministry synergy and collaboration would impact public policy, and political party relationships would gain more influence, as previously discussed. The flexibility granted by the amendment, allowing ministries to be formed "as needed by the President," ultimately fails to provide legal certainty because it does not meet the lex stricta requirement.

Second, the phrase "as needed by the President" does not align with the *lex certa* indicator. The *lex certa* indicator in the theory of legal certainty, according to Schaffmeister et al., means that there should be no formulation of legal rules that are unclear.[31] This ambiguity leads to legal ambiguity and intimidation of the public.[32] The amendment to Article 15 of the State Ministry Law, stating "as needed by the President," creates legal uncertainty because it does not align with *lex certa*. This means that the phrase "as needed by the President" is multivocal and ambiguous, particularly regarding the phrase "the President's needs." Presidents' needs can be interpreted subjectively because there are no clear parameters to define what these needs are. The President can form and restructure ministries according to their desires and preferences. This effectively returns the structuring and formation of ministries to past practices, with all the negative consequences and implications discussed above.

The analysis of the phrase "as needed by the President" in the amendment to Article 15 of Law No. 61/2024 on Amendments to Law No. 39/2008 on State Ministries, it can be concluded that the phrase "as needed by the President" does not provide legal certainty because it does not align with the two indicators of the theory of legal certainty, namely, the *lex certa* and *lex stricta* indicators. This leads to logical consequences, such as the emergence of patronage politics becoming more prominent between the President and the elected President's coalition, increased bureaucratic complexity within ministries, and greater state expenditure if more ministries are formed. Furthermore, the lack of synergy and collaboration among ministries will result in disorder, which will impact public policy, and political party relations will grow stronger, as previously mentioned. Therefore, the formation and structuring of state ministries would regress and return to the practices of the past, as it lacks a limit on the number of ministries, causing legal uncertainty in the future.

[31] D Schaffmeister, Nico Keijzer, and E PH, "Sutorius," *Hukum Pidana*, 1995, 82–86.

[32] Jan Remmelink and Tristam Pascal Moeliono, *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Gramedia Pustaka Utama, 2003).

In a rule-of-law state, governance must be based on the law, not on individuals. Therefore, the logical consequence of this is that the law must reign supreme and govern, not individuals. Consequently, humans or even state power must submit to and comply with the law. Since the law is the primary instrument for limiting state power in carrying out actions and maintaining public order, one of the essential requirements for fulfilling the function of law is to ensure that it provides legal certainty.[33]

The negative consequences that have been outlined, resulting from the amendment to the State Ministry Law, particularly the removal of the maximum limit on the number of ministries and replacing it with the phrase "as needed by the President," which does not meet the two indicators of the theory of legal certainty, emphasize that this change has worsened the situation regarding the formation and structuring of state ministries. Therefore, it is imperative to restore the regulation on the number of state ministries to its previous state, which provided a maximum limit on the number of ministries. The amendment to the State Ministry Law needs to be reconstructed, keeping the maximum limit on the number of ministries while referring to the provisions of Articles 4 and 5 of Law No. 39 of 2008 on State Ministries, which states that the number of Ministries. Additionally, it is necessary to introduce meritocratic requirements in the selection criteria for ministers who will lead each ministry, ensuring that ministers are appointed based on their competence and qualifications rather than political considerations.

One potential reform could be the creation of an independent body responsible for conducting regular and transparent evaluations of the necessity and effectiveness of each ministry's work. This body would be tasked with ensuring that the creation and restructuring of ministries are based on empirical needs rather than political considerations, thus preventing the potential misuse of presidential prerogative powers and reducing the risk of bureaucratic expansion that lacks substantive justification. To implement the recommendation for judicial review and restructuring of the ministries, it is crucial to identify the key stakeholders and actors involved in the process. Potential actors for conducting a judicial review include constitutional courts, legal scholars, and key governmental oversight bodies such as the National Law Development Agency (BPHN) and the Ministry of Administrative and Bureaucratic Reform (*Kemenpan* RB). The ideal scheme for improving the ministry structure should include a transparent and objective assessment process that incorporates inputs from experts in governance, legal theory, and public administration. The review process should focus on establishing clear criteria for ministry creation, ensuring that any changes align with national needs, rather than

[33] Remmelink and Moeliono.

political interests. Additionally, establishing a multi-stakeholder oversight body composed of representatives from the legal, administrative, and public policy sectors could guide the restructuring process to ensure long-term stability and efficiency.

In addition to independent oversight, a cap-and-review mechanism should be introduced. Under this framework, a statutory default limit, such as the previously established 34 ministries, would be maintained. However, any expansion beyond this cap would require formal justification through periodic performance and necessity assessment. Countries such as South Korea have implemented similar adaptive frameworks, where ministry effectiveness is periodically reviewed against national development goals. Similarly, Brazil enforces performance-based evaluations as part of its ministerial budgeting process.[34]

2.3 Regulatory Innovation in Ministerial Formation: Adaptive Models and Oversight Mechanisms

In modern administrative governance, limiting the number of ministries should not rely solely on rigid numerical thresholds. Instead, a more adaptive regulatory model is necessary one that allows executive flexibility while maintaining institutional accountability. A feasible solution lies in the implementation of a *cap-and-review framework*, a governance approach discussed in regulatory reform literature and promoted by the Organisation for Economic Co-operation and Development (OECD) as part of its principles for dynamic institutional design.[35] This model adopts a normative limit (such as 34 ministries) as a default reference point, whereby any deviation beyond this benchmark must be formally justified through periodic reviews and performance evaluations. Under this system, ministerial expansion is not categorically prohibited but must be grounded in demonstrable administrative necessity, evidence-based assessments, and alignment with national development goals. The cap-and-review concept offers a middle ground—upholding the President's prerogative while embedding checks that mitigate arbitrary institutional proliferation. Similar frameworks have been applied to public sector restructuring in countries such as South Korea and Canada, where ministry formation is guided by effectiveness metrics and periodic legislative oversight.[36] Embedding this model into

[34] OECD, *G20/OECD Principles of Corporate Governance 2015* (OECD Publishing, 2015), https://doi.org/10.1787/9789264236882-en.

[35] Jeroen van der Heijden and Graeme Hodge, "Ten Global Trends in Regulation: A Future Outlook," in *The Palgrave Handbook of the Public Servant*, ed. Helen Sullivan, Helen Dickinson, and Hayley Henderson (Cham: Springer International Publishing, 2021), 741–59, https://doi.org/10.1007/978-3-030-29980-4_2.

[36] van der Heijden and Hodge.

Indonesia's legal framework would ensure flexibility without compromising administrative rationality or legal predictability.

Additionally, a *sunset clause* can be introduced for newly established ministries. The *sunset clause* is a policy mechanism originating from legislative practices in the United States and has been widely adopted in OECD countries. It mandates the automatic review or dissolution of an institution within a predetermined timeframe, unless it demonstrates continued relevance through measurable performance outcomes.[37] Such provisions are intended to prevent the institutionalization of ad hoc entities that lack long-term strategic value and functional coherence. According to the OECD, *sunset mechanisms* are increasingly utilized in public sector governance to reduce administrative inertia and maintain structural alignment with evolving policy demands.[38] These mechanisms also function as safeguards against politicization in executive structuring by anchoring institutional continuity in objective performance rather than political affiliation or transactional allocation. Embedding such clauses within the State Ministry Law could promote adaptive administration while preserving the integrity and legitimacy of the executive institutions.

To operationalize these frameworks, an independent regulatory oversight body should be established with the mandate to conduct periodic evaluations of ministerial performance, assess functional overlaps, and determine whether the existence of each ministry is justified. This institution must be composed of multidisciplinary professionals from the legal, public policy, and administrative sectors to ensure impartiality and methodological rigor. The oversight body would not override presidential authority but would provide evidence-based recommendations grounded in good governance principles. Its evaluations would feed into parliamentary reporting structures, enabling legislative scrutiny and public transparency to be achieved.

Importantly, embedding these mechanisms within the legal architecture of executive formation reaffirms the principle of executive accountability in constitutional democracy. As Dicey emphasized in his formulation of the rule of law, the discretionary powers of the executive must always be constrained by general principles and be subject to judicial or legislative review.[39] By instituting procedural checks, such as cap-and-review and sunset provisions, the executive is guided, not

[37] Maarten de Jong and Alfred Tat-Kei Ho, "Lessons about Integrating Performance with Budgeting in High-Income Countries: An Evolving Exercise," in *Performance Budgeting Reform* (Routledge, 2019).

[38] Bergseng Benedicte, Degler Eva, and Lüthi Samuel, *OECD Reviews of Vocational Education and Training Unlocking the Potential of Migrants in Germany* (OECD Publishing, 2019).

[39] Albert Venn Dicey and Emlyn Capel Stewart Wade, *Introduction to the Study of the Law of the Constitution* (HeinOnline, n.d.).

restricted, toward responsible statecraft. These models offer a strategic equilibrium: they retain flexibility for dynamic governance while discouraging the excessive personalization or politicization of administrative architecture. In the long term, such a design fosters a lean, coherent, and responsive executive structure that aligns with both legal predictability and the demands of effective public administration.

Several countries have adopted adaptive ministerial governance frameworks that balance executive flexibility and institutional accountability. These models recognize that rigid limits on the number of ministries may hinder responsiveness, while unrestrained expansion may generate inefficiencies and legal ambiguity. South Korea presents a notable example where ministerial structures are periodically adjusted in response to changing policy needs, yet they remain subject to rigorous performance evaluation. The South Korean Government Organization Act provides a flexible legal foundation for the creation, dissolution, or restructuring of ministries; however, such changes are accompanied by detailed legislative oversight and public performance audits.[40] Ministries must submit annual operational reports to the National Assembly, which assesses performance indicators and budget efficiency before approving the structural modifications. This model demonstrates how executive discretion can coexist with robust parliamentary control, ensuring that institutional design evolves without compromising transparency and effectiveness.

Brazil offers a complementary case of reform-oriented, ministerial governance. In recent decades, Brazil has implemented administrative streamlining through a combination of digital transformation and performance-based evaluations. The Ministry of Planning, Budget, and Management (*Ministério do Planejamento*) introduced integrated results frameworks that tie ministerial existence to quantifiable development outcomes.[41] This approach obliges each ministry to articulate measurable targets aligned with national priorities, which are monitored by internal audit units and external watchdogs. Moreover, the Brazilian Court of Audit (*Tribunal de Contas da União*) functions as a constitutional authority tasked with evaluating public administration efficiency, including ministerial portfolios' necessity and productivity. By enforcing performance-based legitimacy, Brazil's system disincentivizes the proliferation of ministries as tools for political appeasement.

Both South Korea and Brazil underscore the importance of institutionalizing ministerial accountability through legal, procedural, and evaluative mechanisms.

[40] Helen Canton, "Organisation for Economic Co-Operation and Development—OECD," in *The Europa Directory of International Organizations 2021*, 23rd ed. (Routledge, 2021).

[41] Ricardo Corrêa Gomes and Leonardo Secchi, "Public Administration in Brazil: Structure, Reforms, and Participation," in *The International Handbook of Public Administration and Governance*, by Andrew Massey and Karen Johnston (Edward Elgar Publishing, 2015), 226–46, https://doi.org/10.4337/9781781954492.00017.

These systems neither prohibit executive adaptation nor allow for unmoderated discretion. Instead, they establish normative pathways for recalibrating administrative structures based on empirical needs and functional relevance. Importantly, these countries illustrate that ministerial flexibility can be achieved without forfeiting the rule-based governance. Periodic review cycles, legislative scrutiny, and performance auditing constitute an ecosystem of checks that prevents arbitrary institutional expansion while allowing governments to remain agile in the face of emerging challenges.

For Indonesia, adopting similar principles would entail embedding legal requirements for evidence-based ministerial formation into the revised State-Ministry Act. Rather than reinstating a rigid numerical cap, the law could mandate structured evaluation processes, performance benchmarks, and review timelines to guide the formation and dissolution of ministries. These comparative models offer practical insights for ensuring that any expansion of executive power remains anchored in accountability, legality, and policy relevance, which are the core tenets of democratic administration.

CONCLUSION

The amendment to the State Ministry Law, particularly the revision of Article 15 to include the phrase "as needed by the President," has created substantial legal uncertainty. This phrase fails to meet the two key indicators of legal certainty theory: *lex stricta*, which requires legal norms to be binding and leaves no room for overly broad interpretation, and *lex certa*, which mandates clarity and precision in legal formulations. The absence of a defined numerical cap allows for unchecked presidential discretion in forming ministries, opening the door to intensified patronage politics, bloated bureaucracy, inefficient inter-ministerial coordination, and inflated budgetary allocations, all of which ultimately undermine policy effectiveness and public trust. To address these challenges, restoring a fixed limit on the number of ministries is necessary but insufficient. Forward-looking reforms must be adopted to modernize institutional design. These include introducing merit-based ministerial appointments, establishing an independent oversight body to evaluate the necessity and performance of ministries, implementing a cap-and-review framework that permits expansion only through formal justification, and considering a sunset clause for newly created ministries to ensure their continued relevance and prevent permanent institutional bloat. These adaptive governance models strike a balance between executive flexibility and accountability, reinforcing legal certainty while aligning ministry formation with actual administrative needs and the democratic principles.

DISCLOSURE

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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This article is partially based on the author's undergraduate thesis submitted to the Faculty of Law, University of Brawijaya, Indonesia. While the thesis explored general themes related to legal reform, this paper significantly develops a new analytical focus on the restructuring of state ministries in Indonesia, with approximately 30% of the material drawn from the original thesis.

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Authorship and Level of Contribution

Muhammad Jihadil Akbar contributed to the conceptualization, methodology, and writing of the manuscript. Dhia Al Uyun was responsible for the literature review, data collection, and drafting of the manuscript. Ngesti Dwi Prasetyo assisted with the revision, editing, and provision of critical feedback. All authors have reviewed and approved the final manuscript, with their contributions aligned with the guidelines set forth by the Committee on Publication Ethics (COPE**)** for authorship.

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