



Authority of the Minister of Law and Human Rights in revoking other ministerial regulations

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Abstract

Ministerial Regulation is part of a system of laws and regulations whose existence is recognized based on Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. In constitutional practice, the revocation of a ministerial regulation should be carried out by a regulation of equal or higher quality. However, an unusual phenomenon occurred when the Regulation of the Minister of Law and Human Rights Number 14 of 2019 concerning the Ratification of Cooperatives revoked the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 9 of 2018 concerning the Implementation and Development of Cooperatives. This raises questions about the limits of authority between ministries and the potential for legal vacancies in the regulation of cooperatives. This study aims to analyze the authority of the Minister of Law and Human Rights in revoking other ministerial regulations, analyze the juridical impact of the revocation, and examine the legal position of the revoked ministerial regulations.

Keywords: Ministerial authority, revocation of ministerial regulations, laws and regulations

Introduction

Indonesia is a country that implements a presidential system of government. The point is, Indonesia is led by the president and vice president. In carrying out their duties as heads of government, the president and vice president are assisted by the ministers who lead their respective ministries. State ministry institutions are juridically regulated in Law of the Republic of Indonesia Number 39 of 2008 concerning State Ministries (Fence M. Wantu, 2015:75) ^[3]. Ministries in Indonesia are divided into three categories, namely coordinating ministries, ministries of departments, and ministries of state. One of the products of legislation in Indonesia is a ministerial regulation whose existence is recognized in Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations which states:

1. Types of Laws and Regulations other than as intended in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions, or commissions at the same level established by law or the Government by order of the Law, the Provincial Regional House of Representatives, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or equivalent.
2. Laws and Regulations as referred to in paragraph (1) are recognized as having their existence and have binding legal force as long as they are ordered by a higher Laws and Regulations or formed based on authority.

Ministerial Regulation is an inseparable part of laws and regulations because its legality has been guaranteed in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations which are in the process of forming and ratifying them first through the process of attribution or delegation of laws and

regulations on them. Laws in the form of laws and regulations that do not have legal certainty cannot be used as a guideline in solving various legal problems that should be their responsibility. Legal certainty can be realized through good and clear norms in a law and its application will also be clear. In other words, legal certainty means the legality, the subject and the object and the threat of punishment (Susanto, 2016:20) ^[13].

Ministerial Regulation is a central regulation made by the central government which is the implementation of higher regulations as well as the implementation of central authority that has a higher position than regional regulations. Therefore, every determination of regional regulations must refer to the ministerial regulation (Maria Farida, 2008:47) ^[8]. The formation of ministerial regulations itself is motivated by government policies that need to be outlined in the form of regulations that are implemented to higher regulations, therefore the Minister or ministerial-level officials can be given the authority to make regulations that are implementation (Zaka Firma Aditya, 2019:95) ^[14].

Regarding the authority of the Minister, H.A.S. Natabaya in his book said that "Basically, the minister as a state official has three powers to make decisions, namely decisions that are decisive (*beschikking*), for example determining the appointment of officials in his work environment. The Minister also has the authority to make policy rules (*beleidsregels*) that are not based on a law and regulation but are based on *freis ermissen* or discretionary authority (*discretionare bevoegdheid*) provided that the *beleids* do not conflict with existing laws and regulations and the general principles of good governance should not be arbitrary, abuse of power, etc. The third authority is to make regulations (*regeling*) on the condition that the authority to make regulations called the Ministerial Regulation is delegative authority that comes from the President, because the minister is the President's assistant" (H.A.S. Natabaya, 2006:178) ^[4].

Responding to the dynamics in government affairs and following the times, it is common when a regulation is

amended or even revoked, to improve the material or correct the normative errors of the previous regulation, in general a regulation can revoke regulations that are at or below the level or below or laws and regulations that are still in force can only be deleted, revoked, or amended by laws and regulations that are equivalent or more high. However, an unusual phenomenon occurred when the Regulation of the Minister of Law and Human Rights Number 14 of 2019 concerning the Ratification of Cooperatives revoked the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 9 of 2018 concerning the Implementation and Development of Cooperatives. Permenkumham Number 14 of 2019 was stipulated with the aim of implementing the provisions of Article 14 paragraph (3) of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.

The effect of the revocation of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 9 of 2018 through Article 31 of the Regulation of the Minister of Law and Human Rights Number 14 of 2019 which reads "When this Ministerial Regulation comes into force, the provisions regarding the ratification of the deed of establishment of the Cooperative, the amendment of the Cooperative's articles of association, and the dissolution of the Cooperative as stipulated in the Regulation of the Minister of Cooperatives Number 9 of 2018 concerning the implementation and development of cooperatives (State Gazette of the Republic of Indonesia Year 2018 Number 833) is declared invalid." This could give rise to sectoral egos between ministries and also a legal vacuum because the material revoked in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 9 of 2018 concerning the Implementation and Development of Cooperatives was not rearranged in detail in the Regulation of the Minister of Law and Human Rights Number 14 of 2019 as stipulated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises.

The Ministry of Law and Human Rights should provide legal guidance to the cooperative minister to change the content of Regulation Number 9 of 2018 instead of revoking it with the Regulation of the Minister of Law and Human Rights, because it has an impact on the legal vacuum and can cause chaos in the government. In addition, if other agencies follow suit by revoking other Ministerial Regulations, it will cause chaos in each agency. When viewed in principle, it also causes problems among the community by giving rise to the assumption of unethical behavior in the government.

The objectives of this research are knowing the authority of the Minister of Law and Human Rights to Revoke the Regulation of Other Ministers, the Juridical Impact of the Revocation of Other Ministerial Regulations by the Minister of Law and Human Rights, and the Legal Position of other Ministerial Regulations that have been Revoked by the Minister of Law and Human Rights.

Research Methods

The types of Research used in This research is normative law, namely research carried out by reviewing literature materials or secondary data as basic material in researching traceably on regulations and literature related to problems (Soerjono Soekanto & Sri Mamudji, 2006: 13-14) ^[12].

The Research Approach used in this study is a historical approach, this approach aims to find legal rules from time to time in order to understand the philosophy of these legal rules and study the development of these legal rules (Khusbul Vibhute & Filipos Aynalem, 2009: 32) ^[7], based on the order of periodization or history behind it. Then a statutory approach was used. This approach is carried out by examining laws and regulations related to or related to the problem at hand and finally used also the Conceptual approach, this approach departs from the views and doctrines that develop in legal science.

This research uses qualitative analysis, namely understanding data by collecting, filtering, analyzing and concluding data obtained during research systematically.

Results and Discussion

Authority of the Minister of Law and Human Rights to Revoke Regulations of Other Ministers.

The Minister of Law and Human Rights has a very strategic position in the system of forming laws and regulations in Indonesia. As the leader of the Ministry of Law and Human Rights, he has the task of coordinating and organizing policy formulation in the legal field, including the harmonization and synchronization of laws and regulations between ministries or institutions. In Article 46 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019, which states that the harmonization, rounding, and consolidation of the conception of draft laws and regulations is carried out by the Ministry of Law and Human Rights. As a responsible actor in the harmonization and legalization stages, the Ministry of Law and Human Rights has a crucial function in ensuring that each draft regulation complies with the principles of the formation of laws and regulations (Jimly Asshiddiqie, 2015:92) ^[6].

Although it does not have the authority to establish regulations in other sectors, the Ministry of Law and Human Rights still has administrative control over the formal validity of a regulation that has been established by other ministries (Directorate General of Laws and Regulations, 2019:18) ^[2]. However, this authority is administrative in nature and does not include substantive authority over the content of regulations originating from the technical ministry. The Ministry of Law and Human Rights cannot revoke other ministerial regulations just because they consider that there is a discrepancy, because the authority is the domain of the technical minister concerned or of the President as the head of government. According to Bivitri Susanti, the boundary between the harmonization function and substantive intervention must be strictly maintained so that there is no abuse of authority between ministries in the presidential system of government (Bivitri Susanti, 2020:74) ^[1]. Thus, the function of the Ministry of Law and Human Rights must remain within an administrative framework that supports the rule of law, not as a tool of legal domination over other ministries.

The Ministry of Law and Human Rights also has the authority to promulgate, which signifies the enactment of a regulation, but in the event of a material disagreement from the regulation, the Ministry of Law and Human Rights is not authorized to reject the promulgation on the grounds of disagreement with the substance of the ministerial regulation that has been determined by the technical ministry (Bivitri Susanti, 2020:66) ^[1]. Ministerial

regulations that have been legally promulgated acquire full legal force, so their existence can only be revoked by the constituent officials themselves or by higher legal norms. If the revocation is carried out by another official without a legal basis, then the action can be considered legally defective and contrary to the principle of legality (Philipus M. Hadjon, 1987:95) ^[9].

The Ministry of Law and Human Rights issued Regulation of the Minister of Law and Human Rights Number 14 of 2019 concerning the Ratification of Cooperatives as a follow-up to the issuance of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (Online Single Submission), which was issued on June 21, 2018. The regulation has transferred the authority to ratify, amend, and dissolve cooperatives from the Ministry of Cooperatives and Micro, Small and Medium Enterprises to the ministry that organizes government affairs in the legal field. But the authority to revoke the regulations of other ministers remains unjustified, referring to the principle of *lex auctoritatis* (the principle of authority) that only the constituent officials have the authority to revoke or amend the regulations. The formation and repeal of regulations are inherent in the authority of the constituent officials.

The Juridical Impact of the Revocation of Other Ministerial Regulations by the Minister of Law and Human Rights.

Actions that exceed authority or *ultra vires* are an important concept in assessing the legality of a legal act by state officials. According to the principle of legality in administrative law, every government official may only act based on the authority given by laws and regulations (Philipus M. Hadjon, 2007:134) ^[10]. The juridical impact of *ultra vires actions* in the form of the revocation of other ministerial regulations by the Minister of Law and Human Rights may give rise to the legal invalidity of the act. According to the theory in state administrative law, any action of an official that has no basis of authority is null and void (*nietig van rechtswege*), so that the illegally revoked regulation remains valid and the act of revocation has no legal force (Ridwan HR, 2012:222) ^[11].

Actions that exceed authority also have the potential to cause conflicts between ministries and disrupt coordination between government agencies. When one minister takes administrative steps that should be the authority of another minister, there is juridically a violation of the principle of non-intervention of authority between administrative officials. This not only raises normative problems, but also has an impact on effective and harmonious governance (I Gede Pantja Astawa, 2008:73) ^[5]. Testing of *ultra vires* actions can be carried out through the State Administrative Court if the action has a direct impact on a person's legal rights and interests. In addition, supervisory institutions such as the Ombudsman of the Republic of Indonesia can also conduct investigations into alleged maladministration in the act of revoking regulations by unauthorized ministers. This shows that the legal system has corrective instruments against abuse or abuse of authority.

Some of the juridical impacts resulting from the revocation of ministerial regulations by other ministers are the illegality of the revocation, and legally it can be declared null and void, in addition to violations of the principles of legality and competence create legal uncertainty, then

institutionally, this violation can also trigger conflicts between ministries.

Legal Position of Other Ministerial Regulations Revoked by the Minister of Law and Human Rights.

In the Indonesian administrative law system, the principle that applies in the formation and revocation of regulations is the principle of authority. This means that only officials who have attribution authority or legitimate delegated authority can revoke a regulation. In the context of a ministerial regulation, the official authorized to revoke is the minister who issued the regulation, or another official who is explicitly authorized to do so by a higher regulation. Delegations from higher regulations should also be explicit, meaning written and explicit in higher regulations, not just interpretive.

Actions that exceed the authority in the form of the revocation of other ministerial regulations by the Minister of Law and Human Rights, according to the theory in the state administrative law, any action of an official that does not have a basis of authority is null and void (*nietig van rechtswege*), so that the illegally revoked regulations remain valid and the act of revocation has no legal force.

Conclusion

Based on the principle of *lex auctoritatis* (the principle of authority), that is, only the officials who form the authority to revoke or amend the regulation. The formation and repeal of regulations are inherent in the authority of the constituent officials. Therefore, the act of revoking the Regulation of the Minister of Cooperatives by the Minister of Law and Human Rights is an action that exceeds the authority and becomes null and void for the sake of the law, so that the regulation of the Minister of Cooperatives Number 9 of 2018 remains valid, because the revocation of the regulation is carried out with an improper mechanism.

In response to this, it is necessary to affirm the regulation regarding the mechanism for revoking Ministerial Regulations in laws and regulations, so that there is no longer any ambiguity of norms regarding the authority to revoke between ministries that have the same position. In addition, the Ministry of Law and Human Rights in carrying out the function of harmonizing laws and regulations should prioritize the function of coordination and legal guidance, not directly revoke the regulations of other ministries, so as not to cause sectoral egos, regulatory disharmony, and legal uncertainty in society.

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