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Urgensi membatasi eksistensi peraturan menteri sebagai upaya penataan regulasi di Indonesia = Urgency to limit the existence of ministerial regulations as the regulatory arrangement effort in Indonesia

Dzikry Gaosul Ashfiya, author

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Abstrak

Sebagai upaya penataan regulasi di Indonesia, eksistensi Peraturan Menteri seharusnya dibatasi. Hal ini disebabkan, persentuhan kewenangan pembentukan peraturan perundang-undangan dan wewenang pemerintahan yang melekat pada kedudukan Menteri, merefleksikan kebebasan dan ketidakterbatasan penerbitan Peraturan Menteri. Pada muaranya, disharmonisasi dan pertentangan baik secara horizontal maupun vertikal, tidak dapat dihindari. Terlebih, realita hyper regulasi lingkup eksekutif semakin memperlihatkan bahwa Peraturan Menteri adalah yang paling berkontribusi. Sebagai upaya pembatasannya, penelitian hukum normatif dengan pendekatan perundang-undangan, sejarah, konseptual dan kasus ini terlebih dahulu akan mengkaji kedudukan Peraturan Menteri dalam sistem peraturan perundang-undangan Indonesia, untuk selanjutnya merumuskan gagasan mengenai konsepsi pembatasannya di tengah skema persentuhan dimensi hukum administrasi negara dan sistem peraturan perundang-undangan. Berdasarkan hasil penelusuran secara normatif-historis, penelitian ini menemukan bahwa sekalipun Indonesia pernah menganut kedua sistem pemerintahan parlementer dan presidensiil baik dalam konstitusi maupun praktiknya, kedudukan Peraturan Menteri dalam sistem peraturan perundang-undangan tetap terlihat sebagai peraturan delegasian bukan otonom, dimana kewenangan pembentukannya tidak bersifat bebas tanpa kendali melainkan terbatas hanya berdasar perintah atau dalam rangka melaksanakan ketentuan peraturan perundangan yang lebih tinggi. Selanjutnya, sebagaimana telah dilakukan identifikasi di tengah skema persentuhan Peraturan Menteri sebagai peraturan perundang-undangan dan peraturan kebijakan, ditemukan adanya titik temu yang mana baik secara formil maupun materiil dapat dirumuskan konsepsi pembatasan dalam pembentukannya. Lebih lanjut, pembatasan eksistensi Peraturan Menteri juga dapat dilakukan dengan memahami makna keterbatasan yang tersirat dalam Pasal 8 ayat (2) UU No. 12 Th. 2011 dan merevisi konstruksi Pasal tersebut, serta melalui upaya pembatasan pendelegasiannya. Pada saat yang sama, secara ideal Presiden selaku pemimpin eksekutif dan pemimpin para menteri-menterinya seharusnya juga berperan aktif mengendalikan dan membatasi eksistensi Peraturan Menteri melalui penguatan skema executive preview dalam wujud harmonisasi rancangan Peraturan Menteri sebagai upaya penataan regulasi dan pencegahan terjadinya hyper regulasi lingkup eksekutif.

.....As the regulatory arrangement effort in Indonesia, the existence of Ministerial Regulations should be limited. This is due to the involvement of regulatory authority and governmental authority attached to the position of the Minister, reflects the freedom and limitless authority to form Ministerial Regulations. In the end, disharmony and contradiction, both horizontally and vertically, cannot be avoided. Moreover, the reality of hyper-regulation in the executive scope increasingly shows that Ministerial Regulations are the most contributing. As an effort to limit it, this normative legal research with a statutory, historical, conceptual and case approach will first examine the position of the Ministerial Regulation in the Indonesian

statutory system, then formulate ideas regarding the conception of its limitation in the midst of its involvement scheme of state administrative law and statutory system. Based on the results of a normative-historical search, this study finds that even though Indonesia had ever adopted both parliamentary and presidential systems of government in the constitution and in practice, the position of the Ministerial Regulation in the statutory system is still seen as a delegatory regulation not an autonomous, where the authority for its formation is not free without control but limited only by order or in the context of implementing the provisions of higher regulations. Furthermore, as has been identified in the midst of the involvement scheme of the Ministerial Regulation as a statutory regulation and policy regulation, it was found that there were common points where both formally and materially the conception of limitations could be formulated in its formation. Moreover, limiting the existence of a Ministerial Regulation can also be done by understanding the meaning of limitations implied in Article 8 paragraph (2) of Law No. 12 Th. 2011 and revising the construction of the Article, as well as through efforts to limit its delegation. At the same time, ideally the President as the chief executive and the leader of his ministers should also play an active role in controlling and limiting the existence of Ministerial Regulations through strengthening the executive preview scheme in the form of harmonization of the draft of Ministerial Regulations as the regulatory arrangement effort and the prevention of hyper-regulation in the executive scope.