



Legal Basis for Formation of Non-Ministerial Government Institutions in the Indonesian Government System

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Article 1 paragraph (3) of the 1945 Constitution stipulates that the Indonesian state is based on law. Consequences as a state based on law, the implementation of the duties and functions of the government must be based on law. In the 1945 Constitution, the President also has authority in administering government, so that in terms of forming non-ministerial government institutions, it is also the authority of the president. The problem is regarding the legal basis for the formation of Non-Ministerial Government Institutions which are regulated in various laws and regulations which lead to ambiguity in the regulations. The research method used is normative juridical (legal research) which is carried out by reviewing various laws and regulations and literature that are theoretical in nature and then connected to the subject matter. The results of the study explain that there is no law that specifically regulates Non-Ministerial Government Institutions, causing the subjectivity of the President in the formation of Non-Ministerial Government Institutions which are still very dominant as holders of government power. There is ambiguity in the law and institutional variations of Non-Ministerial Government Institutions in the Indonesian government system, especially at the leadership level of Non-Ministerial Government Institutions. There has been a transformation of several state institutions with the status of Non-Ministerial Government Institutions into Government Institutions, even though there is no legislation at the level of the law that provides attribution or delegation of authority to the President to establish state institutions with the status of Government Institutions.

Keywords: Government Institutions, Non-Ministerial, Government Systems, Legislation



INTRODUCTION

Indonesia is a state based on law, which has been expressly and clearly stated in Article 1 paragraph (3) of the 1945 Constitution. Consequently, Indonesia adheres to a rule of law, so all implementation of government duties and functions must be based on laws and regulations. In a state based on law according to the 1945 Constitution, it also regulates the implementation and functions of government in Indonesia which are carried out by a president, assisted by a vice president and his ministers including non-ministerial government institutions. Such a system of government is known as a presidential system. The presidential system does not recognize distinctions and even more so the separation between positions as head of state and head of government (Asshiddiqie, 2005). Study according to the public's view of the presidential institution by examining how the public evaluates the exercise of presidential power in a separate power system (Reeves & Rogowski, 2015). The president has a big role in the administration of government power in Indonesia.

According to the presidential system of government, the position of the executive does not depend on the people's representative body (Zaman, 2018). C.F. Strong (2004) refers to the presidential system as a non-parliamentary executive or fixed executive. The executive in this sense cannot be influenced by the actions of the legislature. The adopted presidential system to achieve the intended state goals must also be supported by good governance and institutions that are right sized according to the needs and workload of the organization. Institutional government agencies, both at the central and regional levels, must be designed in such a way as to be able to increase the effectiveness of bureaucratic performance, the efficiency of the use of the state budget, and be able to answer the challenges of change and problems that occur in practice.

The presidential system gives full authority to the president in carrying out government functions, so that the president is known as the head of government. In the sense of a presidential system, it means that the holder of government power is the president who is separate from the parliamentary institution, and the president is the holder of power in administering government (Indahsari, et.al., 2021). As the head of government, the president in carrying out his government is assisted by ministers who are in charge according to their respective expertise. F.A.M. Stroink (2004) says, authority based on public law is the juridical ability of the agency. Public authority can be constitutional (*staatsrechtelijk bevoegdheid*) or administrative (*administratief bevoegdheid*). Administrative authority is authority given and implemented by state institutions, while administrative authority is given and implemented by administrative or government organs (Strong, 2004). According to Ridwan (2014), government authority is the overall rights and obligations given to government organs to carry out various government legal actions, namely actions that cause legal consequences in the government sector. From the point of view of constitutional law norms, an action or decision of a state



institution can be considered valid if it is carried out based on the authority it has and according to the procedures determined by the constitution (Zulva, 2011).

In practice, the President in carrying out state government power in Indonesia is not only assisted by state ministers who are constitutionally mentioned in the 1945 Constitution, there are also state institutions formed based on laws or presidential regulations (legislation). In this regard, the formation of state institutions that are formed based on laws and regulations and have the status of government institutions with the division of government tasks in the executive field. The reason for this is because the President's power is very broad and obtains strong political legitimacy from the people through elections. The position of President is only filled by one person, which is different from the position of members of the House of Representatives which are filled by many people, so that the President occupies the main and central position in the government of the country (concentration of power and responsibility upon the president). The final report on the study of central government institutional design made by the Institute for State Administration describes non-structural institutions as quasi-institutions of government and community organizations formed to strengthen the process of democratization in the administration of national and state life (Negara, 2013).

With this argument, in the end the President made several government institutions in exercising his government power through the laws and regulations he made (both in the form of laws and presidential regulations). Because many laws and regulations are made as the legal basis for non-ministerial government institutions, it can lead to ambiguity in the establishment of the non-ministerial government institutions themselves, so that there is overlap in their arrangements. This is the problem in this paper, because the relationship between the norms governing the creation of other norms and the norms created according to the first norm can be expressed figuratively as the relationship between superordination and subordination. The norms governing the creation of other norms have a higher position, the norms created in accordance with the first-mentioned norms have a lower position (Kelsen, 2015).

Jimly Asshiddiqie (2020) argues that, everything related to normative content material contained in laws and regulations is the substance of legal norms which is used as a guide and guide in assessing the right or wrong of an action in legal traffic. In essence, each material norm has practical and binding power if it is based on legal norms that are above it or have a higher hierarchical level. The basic norm which is the highest norm in a system of norms is no longer formed by a higher norm, but the basic norm is determined in advance by society as a basic norm which is a hanger for the norms below it, so that a basic norm is said to be pre-supposed (Indrati, 2020). In terms of the structure or hierarchy of the norm system, the highest (basic norm) becomes the place where the norms below it depend, so that if the basic norm changes it will damage the system of norms below it (Indrati, 2020).



According to Law Number 12 of 2011 as amended by Law Number 13 of 2022 it explains that the legal force of laws and regulations is in accordance with the hierarchy, the consequence is that laws and regulations that have a lower hierarchy must be made on the legal basis of laws and regulations. higher invitation. The law places the 1945 Constitution as occupying the highest position in the hierarchy of national laws and regulations. The constitution gives certain administrative authorities, such as the head of state, the power to establish the general norms by which the provisions of a law are spelled out. General norms of this kind, which are not made by the legislature but by other organs based on general norms made by the legislature, are stipulated as regulations or ordinances (Asshidiqqie & Safa'at, 2006).

RESEARCH METHODS

The research method used is normative juridical (legal research) which is carried out by examining various laws and regulations and literature that are theoretical in nature and then linked to the subject matter. Thus the approach used is *first*, a statutory approach (statute approach), namely an approach using legislation and regulations (Marzuki, 2007). The laws and regulations used are laws and regulations that are related and relevant to the legal issues being studied. *Second*, the conceptual approach refers to legal principles, and these principles can be found in the views of scholars or legal doctrines (Marzuki, 2007).

RESULTS AND DISCUSSION

Development of Formation of Non-Ministerial Government Institutions

Examining the issue of the formation of Non-Ministry Government Institutions in Indonesia, it is necessary to also explain again that Indonesia is a legal state that adheres to a presidential government system, because in a presidential system, the origin and survival of executive and legislative powers are separated, indicating the existence of a chief executive whose authority comes from voter (Shugart, 2005). In Indonesia this presidential system, where the president has a dual role both as head of state and at the same time as head of government. According to the 1945 Constitution, the president, in holding state government power, is assisted by a vice president and state ministers in charge of certain government affairs. Further rules regarding state ministers are regulated in Law Number 39 of 2008 concerning State Ministries.

As the highest person in charge of state government power in Indonesia, the president is given attribution and delegation authority to form laws and regulations to run the government properly. In running the government of the country, the power and responsibility lies with the president (concentration of power and responsibility upon the president) (Indrati, 2020). Developments that are so dynamic in social, political, economic, and global aspects require the government to respond quickly to these changes to realize the welfare of citizens through variations in the structure, duties and functions of state organizations. The scope of each government affairs which is the task of the ministry is still very wide so that in certain

conditions a special institution is needed that can support the main tasks of the ministry. Based on the above considerations, on August 31, 1998, Presidential Decree No. 136 of 1998 was enacted concerning Principles of Non-Departmental Government Organization Organizations.

According to Presidential Decree No. 136 of 1998, Non-Departmental Government Institutions are central-level government agencies established to carry out general government tasks and general development tasks in support of the main tasks carried out by ministers. This Presidential Decree is the first legal product to specifically regulate the organizational principles of Non-Departmental Government Institutions. Subsequent developments, the provisions governing Non-Departmental Government Institutions were replaced by Presidential Decree Number 166 of 2000 concerning Position, Duties, Functions, Authorities, Organizational Structure, and Work Procedures of Non-Departmental Government Institutions. According to this Presidential Decree, Non-Departmental Government Institutions are Central Government Institutions established to carry out certain governmental tasks from the President. Presidential Decree No. 166 of 2000 has broadened the reason for the formation of Non-Departmental Government Institutions, which were previously formed to support the main tasks carried out by ministers, changing to carry out certain governmental tasks from the President. Presidential Decree Number 166 of 2000 underwent four amendments, these changes were successively carried out through (1) Presidential Decree Number 173 of 2000; (2) Presidential Decree Number 16 of 2001; (3) Presidential Decree Number 42 of 2001; and (4) Presidential Decree Number 62 of 2001.

Table 1.

Non-Departmental Government Institutions according to Presidential Decree Number 166 of 2000 and their Amendments

No.	Legal Basis	Types of Non-Departmental Government Institutions	Amount
1.	Presidential Decree Number 166 of 2000 and Presidential Decree Number 173 of 2000.	1. State Administration Agency. 2. National Archives of the Republic of Indonesia. 3. State Civil Service Agency. 4. National Library of the Republic of Indonesia. 5. National Development Planning Agency. 6. Environmental Impact Management Agency. 7. Central Bureau of Statistics. 8. National Standardization Agency. 9. Nuclear Energy Monitoring Agency. 10. National Nuclear Energy Agency.	24

No.	Legal Basis	Types of Non-Departmental Government Institutions	Amount
		11. State Intelligence Agency. 12. National Crypto Agency. 13. Logistics Affairs Agency. 14. National Family Planning Coordinating Board. 15. National Space Flight Institute. 16. National Coordinating Agency for Surveys and Mapping. 17. Financial and Development Supervisory Agency. 18. Agency for Development of Resources for Cooperatives and Small and Medium Entrepreneurs. 19. Indonesian Institute of Sciences. 20. Agency for the Assessment and Application of Technology. 21. Investment Coordinating Board. 22. National Land Agency. 23. National Quarantine Agency. 24. Drug and Food Control Agency.	
2.	Presidential Decree Number 16 of 2001	Same with the types of Non-Departmental Government Institutions in Presidential Decree Number 166 of 2000 and Presidential Decree Number 173 of 2000, plus the National Information Institution.	25
3.	Presidential Decree Number 42 of 2001 and Presidential Decree Number 62 of 2001.	The same as the type of Non-Departmental Government Institution in Presidential Decree Number 16 of 2001, added with: <ol style="list-style-type: none"> 1. National Defense Institution. 2. Poverty Reduction Coordinating Board. 3. National Population Agency. 	28

On September 13, 2001, Presidential Decree Number 103 of 2001 was stipulated regarding the Position, Duties, Functions, Authorities, Organizational Structure and Work Procedures of Non-Departmental Government Agencies which revoked and declared null and void Presidential Decree Number 166 of 2000. The reasons for the formation of Government Institutions Non-departmental according to Presidential Decree No. 103 of 2001 is the same as the reason for establishing a Non-Departmental Government Institution in Presidential Decree

No. 166 of 2000, namely, to carry out certain governmental tasks from the President. The definition of certain governmental tasks from the President as the reason for the formation of Non-Departmental Government Institutions can be said to be broad, brief, and general and highly dependent on the subjective interpretation of the President.

Presidential Decree Number 103 of 2001 has been amended eight times, these changes were successively carried out through (1) Presidential Decree Number 3 of 2002; (2) Presidential Decree Number 46 of 2002; (3) Presidential Decree Number 30 of 2003; (4) Presidential Decree Number 9 of 2004; (5) Presidential Regulation Number 11 of 2005; (6) Presidential Regulation Number 64 of 2005; (7) Presidential Regulation Number 3 of 2013; and (8) Presidential Regulation Number 145 of 2015.

Table. 2.
Types of Non-Departmental Government Institutions according to Presidential Decree Number 103 of 2001 and their Amendments

No.	Legal Basis	Types of Non-Departmental Government Institutions and Descriptions	Amount
1.	Presidential Decree No. 103 of 2001	<ol style="list-style-type: none"> 1. State Administration Agency 2. National Archives of the Republic of Indonesia 3. State Civil Service Agency 4. National Library of the Republic of Indonesia 5. National Development Planning Agency 6. Environmental Impact Management Agency 7. Central Bureau of Statistics 8. National Standardization Body 9. Nuclear Energy Monitoring Agency 10. National Nuclear Energy Agency 11. State Intelligence Agency 12. National Crypto Agency 13. Logistics Affairs Agency 14. National Family Planning Coordinating Board 15. National Space Aviation Institution 16. National Coordinating Agency for Surveys and Mapping 17. Financial and Development Supervisory Agency 18. Indonesian Institution of Sciences 	25

No.	Legal Basis	Types of Non-Departmental Government Institutions and Descriptions	Amount
		19. Agency for the Assessment and Application of Technology 20. Investment Coordinating Board 21. National Land Agency 22. Drug and Food Control Agency 23. National Information Institution 24. National Defense Institution 25. Culture and Tourism Development Agency	
2.	Presidential Decree No. 3 of 2002	Same as the types of Non-Departmental Government Institutions in Presidential Decree No. 103 of 2001, except for the Environmental Impact Management Agency which was merged into the State Ministry of Environment	24
3.	Presidential Decree No. 46 of 2002	Same with the types of Non-Departmental Government Institutions in Presidential Decree No. 3 of 2002, plus the Meteorology and Geophysics Agency	25
4.	Presidential Decree No. 30 of 2003	Same as the types of Non-Departmental Government Institutions in Presidential Decree No. 46 of 2002, except for the Culture and Tourism Development Agency which was merged into the State Ministry of Culture and Tourism	24
5.	Presidential Decree No. 9 of 2004	The same as the type of Non-Departmental Government Institution in Presidential Decree Number 30 of 2003, except for the Logistics Agency which changed to BULOG Public Company	23
6.	Presidential Regulation No. 11 of 2005, and Presidential Regulation No. 64 of 2005	Same as the types of Non-Departmental Government Institutions in Presidential Decree No. 9 of 2004, except for the National Information Institution which was merged into the Ministry of Communication and Informatics	22
7.	Presidential Regulation No. 3 of 2013, and Presidential Regulation No. 145 of 2015	1. Non-Ministerial Government Institutions regulated in Presidential Regulation No. 3 of 2013 consist of: a. State Administration Agency b. National Archives of the Republic of Indonesia	14



No.	Legal Basis	Types of Non-Departmental Government Institutions and Descriptions	Amount
		<ul style="list-style-type: none"> c. State Civil Service Agency d. National Library of the Republic of Indonesia e. National Standardization Body f. Nuclear Energy Monitoring Agency g. National Nuclear Energy Agency h. National Crypto Agency i. National Family Planning Coordinating Board j. National Space Aviation Institution k. Financial and Development Supervisory Agency l. Indonesian Institution of Sciences m. Agency for the Assessment and Application of Technology n. Food and Drug Supervisory Agency <p>2. The National Family Planning Coordinating Board was changed to become the National Population and Family Planning Agency based on Law Number 52 of 2009 and remained in the status of a Non-Ministry Government Institution led by an official of the main high leadership position.</p> <p>3. The State Intelligence Agency changed to a ministry-level organization based on Law Number 17 of 2011.</p> <p>4. Non-Departmental Government Institutions changed their name to Non-Ministry Government Institutions based on Presidential Regulation No. 3 of 2013.</p> <p>5. Specifically for several Non-Ministerial Government Institutions that are regulated separately outside of Presidential Decree No. 103 of 2001 as amended several times, the latest by Presidential Regulation No. 145 of 2015, these Non-Ministry Government Institutions are:</p> <ul style="list-style-type: none"> a. The National Development Planning Agency retains its status as a Non- 	

No.	Legal Basis	Types of Non-Departmental Government Institutions and Descriptions	Amount
		<p>Ministry Government Institution, but at the ministerial level, the leadership is held by the Minister of National Development Planning.</p> <p>b. The Central Bureau of Statistics is regulated in Presidential Regulation No. 86 of 2007, with the status of a Non-Ministry Government Institution led by high-ranking officials.</p> <p>c. The National Coordinating Agency for Surveys and Mapping changed to the Geospatial Information Agency based on Law no. 4 of 2011 and still has the status of a Non-Ministry Government Institution led by officials of the main high leadership positions.</p> <p>d. The Investment Coordinating Board retains its status as a Non-Ministry Government Institution but at the ministerial level, the chairperson is held by the Minister of Investment.</p> <p>e. The National Land Agency retains its status as a Non-Ministry Government Institution but at the ministerial level, the leadership is held by the Minister of Agrarian Affairs and Spatial Planning.</p> <p>f. The National Defense Institute retains its status as a Non-Ministerial Government Institution but is led by a Main High Leader with ministerial-level financial and administrative rights, and</p> <p>g. The Geophysics Meteorology Agency changed to the Meteorology, Climatology and Geophysics Agency based on Law no. 31 of 2009, which has the status of a Non-Ministry Government Institution led by a high-ranking official.</p> <p>6. The total number of regulated non-ministerial government institutions is:</p>	

No.	Legal Basis	Types of Non-Departmental Government Institutions and Descriptions	Amount
		<p>a. According to Presidential Decree No. 103 of 2001 as amended several times, most recently by Presidential Regulation Number 145 of 2015, there are 23 non-ministerial government agencies.</p> <p>b. Apart from those regulated by Presidential Decree No. 103 of 2001 as amended several times, most recently by Presidential Regulation No. 145 of 2015, there are 21 non-ministerial government agencies.</p>	

Furthermore, it is also explained according to the provisions of Law no. 39 of 2008 concerning State Ministries related to Non-Departmental Government Agencies, including (1) ministers are assistants to the President who lead the Ministries; (2) ministries are government apparatus in charge of certain affairs in government; (3) governmental affairs are all affairs as referred to in the provisions of the 1945 Constitution of the Republic of Indonesia; (4) implicitly also changing the nomenclature of Non-Departmental Government Institutions to become Non-Ministerial Government Institutions; (5) the functional relationship between Ministries and Non-Ministerial Government Institutions is carried out synergistically as a system of government within the Unitary State of the Republic of Indonesia in accordance with laws and regulations; (6) Non-Ministerial Government Institutions domiciled under the President and are responsible to the President through the Coordinating Minister; and (7) further provisions regarding the functional relationship between the Minister and non-ministerial government institutions are regulated by a Presidential Regulation.

Condition of Non-Ministerial Government Institutions

Formation of non-ministerial government institutions by Presidential Decree no. 103 of 2001 concerning Position, Duties, Functions, Authorities, Organizational Structure, and Working Procedures of Non-Departmental Government Institutions. The Presidential Decree was later amended several times, most recently by Presidential Regulation No. 145 of 2015. Non-Departmental Government Institutions, hereinafter referred to as Non-Ministerial Government Institutions, are central government institutions established to carry out certain governmental tasks from the President. Considering that non-ministerial government institutions carry out specific assignments from the President, it is necessary to have comprehensive arrangements regarding their duties so that duplication does not occur with the implementation of



"government affairs" which have become the duties of State Ministries based on Law No. 39 of 2008 concerning the Ministry of State.

Furthermore, regarding non-ministerial government agencies, Presidential Decree No. 103 of 2001 concerning Position, Duties, Functions, Authorities, Organizational Structure, and Work Procedures of Non-Departmental Government Institutions as amended several times, most recently by Presidential Regulation No. 145 of 2015 has determined that specific assignments (specific tasks) from the President are the basic reasons for establishing non-ministerial government institutions. Said by Schout (1998) to know the duties of the presidency, the next section can raise questions about the elements that determine effectiveness. However, until now, it can also be understood that the terminology regarding specific assignments (specific tasks) from the President is still general, broad, and there is no detailed explanation regarding this, so that it can be said that certain assignments are very dependent on the subjective judgment of the President as the holder of power. state administration, because there is no doubt about whether the norms that appear in this field are actually legal norms capable of restraining the President (Bradley & Morrison, 2013). This is different from the provisions for the formation of state ministries which have been regulated in such a way in the law regarding the limitation of 3 (three) scopes of government affairs, duties, maximum number, and organizational structure for each type of state ministry.

There is no further explanation regarding the specific assignment's terminology (specific task) from the President which is the basis for the formation of Non-Ministry Government Institutions, giving rise to:

1. Non-Ministry Government Institutions which are a form of transformation from expanding the duties, functions and/or organizational structure of certain state ministries, so that there is difficulty differentiating their existence from state ministries.
2. Non-Ministerial Government Institutions that have the potential to have duplication or overlapping of task implementation with government affairs which are the responsibility of the relevant state ministries.
3. There are variations in the organizational structure (organization) of non-ministerial government agencies, although provisions related to this organizational structure have been stipulated in Presidential Decree No. 103 of 2001 concerning Position, Duties, Functions, Authorities, Organizational Structure, and Work Procedures of Non-Departmental Government Institutions as amended several times, most recently by Presidential Regulation No. 145 of 2015, and/or
4. Potential inefficiencies in the state budget for financing personnel expenditures, goods expenditures, and capital expenditures, because:
 - a. there is duplication of institutions that have the same or nearly the same tasks, even though these tasks can be integrated and carried out by one institution.
 - b. there is no provision that regulates the maximum limit for the number of Non-Ministry Government Institutions that may be formed by the President.

Arrangements regarding Non-Ministerial Government Institutions regulated in Presidential Decree No. 103 of 2001 which was later amended several times, most recently by Presidential Regulation No. 145 of 2015, in its development there are Non-Ministry Government Institutions which are regulated in a separate presidential regulation, there are even several Non-Ministerial Government Institutions which are regulated in law. The establishment of certain Non-Ministerial Government Institutions in the law has indirectly shifted the power of administering state government (executive) power from the President to a joint affair with the People's Representative Council as the holder of legislature-forming power. Even though philosophically, Non-Ministry Government Institutions are part of the President's auxiliary apparatus formed to carry out specific tasks from the President as the holder of governmental power, and there are those who argue that the executive's claim to immortality is derived from constitutional principles (Yoo & Gaziano, 2018).

Currently, based on existing laws and regulations, there are 23 (twenty-three) non-ministerial government institutions in the Indonesian government system, as explained in the table below.

Table 3.
Condition of Non-Ministerial Government Institutions and Legal Basis for Their Formation

No.	Legal Basis of Formation	Nomenclature of Non-Ministerial Government Institutions and Legal Basis for Formation	Position of Leaders of Non-Ministerial Government Institutions	Amount
1.	Law	1. Nuclear Energy Monitoring Agency (Law No. 10 of 1997)	Main High Leadership Position	18
		2. Central Statistics Agency (Law No. 16 of 1997)	Main High Leadership Position	
		3. Secretariat General of the National Defense Council (Law No. 3 of 2002)	Main High Leadership Position	
		4. National Agency for Disaster Management (Law No. 24 of 2007)	Minister level	

No.	Legal Basis of Formation	Nomenclature of Non-Ministerial Government Institutions and Legal Basis for Formation	Position of Leaders of Non-Ministerial Government Institutions	Amount
		5. National Library (Law No. 43 of 2007)	Main High Leadership Position	
		6. Meteorology, Climatology and Geophysics Agency (Law No. 31 of 2009)	Main High Leadership Position	
		7. National Narcotics Agency (Law No. 35 of 2009)	Main High Leadership Position with ministerial-level financial rights and facilities	
		8. National Archives of the Republic of Indonesia (Law No. 43 of 2009)	Main High Leadership Position	
		9. National Population and Family Planning Agency (Law No. 52 of 2009)	Main High Leadership Position	
		10. Geospatial Information Agency (Law No. 4 of 2011)	Main High Leadership Position	
		11. National Land Agency (Law No. 2 of 2012)	Ministerial level (held by the Minister of Agrarian Affairs and Spatial Planning)	
		12. State Administration Institution (Law No. 5 of 2014)	Main High Leadership Position	

No.	Legal Basis of Formation	Nomenclature of Non-Ministerial Government Institutions and Legal Basis for Formation	Position of Leaders of Non-Ministerial Government Institutions	Amount
		13. State Civil Service Agency (Law No. 5 of 2014)	Main High Leadership Position	
		14. National Standardization Body (Law No. 20 of 2014)	Main High Leadership Position	
		15. National Search and Rescue Agency (Law No. 29 of 2014)	Main High Leadership Position	
		16. Maritime Security Agency (Law No. 32 of 2014 and Law No. 11 of 2020)	Main High Leadership Position	
		17. Indonesian Migrant Workers Protection Agency (Law No. 18 of 2017)	Main High Leadership Position	
		18. National Counterterrorism Agency (Law No. 15 of 2003 and Law No. 5 of 2018)	At the ministerial level in matters related to financial rights, administration, and other facilities	
2.	Presidential Regulation	1. Republic of Indonesia National Defense Institution (Presidential Regulation No. 98 of 2016)	Main High Leadership Position with ministerial-level financial and administrative rights	5
		2. Food and Drug Supervisory Agency (Presidential Regulation No. 80 of 2017)	Main High Leadership Position	

No.	Legal Basis of Formation	Nomenclature of Non-Ministerial Government Institutions and Legal Basis for Formation	Position of Leaders of Non-Ministerial Government Institutions	Amount
		3. Tourism and Creative Economy Agency (Presidential Regulation No. 97 of 2019)	Ministerial level (held by the Minister of Tourism and Creative Economy)	
		4. Investment Coordinating Board (Presidential Regulation No. 64 of 2021)	Ministerial level (held by the Minister of Investment)	
		5. National Development Planning Agency (Presidential Regulation No. 81 of 2021)	Ministerial level (held by the Minister of National Development Planning)	

In addition to the various aspects of the legal basis for their formation, the existing conditions of non-ministerial government institutions, up to now, there is still dualism in the position of staff leaders, some are led by officials with ministerial-level positions, and some are led by key high-ranking officials. Even though based on Law no. 5 of 2014, it is stated clearly and unequivocally that the head of a non-ministerial government institution is the main high-level position.

In addition to the existence of various variations of existing Non-Ministry Government Institutions, also considering the dynamics of development which are so dynamic in the social, political, and state aspects, there has been a transformation of several government institutions with the status of Non-Ministry Government Institutions to become Government Institutions. The existence of government institutions with the status of Government Institutions is not regulated through law and there are also no laws that provide attribution or delegation of authority to the President to establish state institutions with the status of Government Institutions.

With regard to Non-Ministerial Government Institutions, although until now there has been no law that specifically regulates Non-Ministry Government Institutions, their existence as government institutions has been legally formally acknowledged and obtained approval by the people through their representatives in the People's Representative Council in several related laws, namely in Law No. 39 of 2008 and Law no. 5 of 2014, as well as Presidential Decree No. 103 of 2001 as amended several times, most recently by Presidential Regulation No. 145 of 2015. Given the dynamics of development in the social, political, and state aspects, there has been a transformation of several government institutions with the status of Non-Ministry Government Institutions into Government Institutions. Transformation is a concept operating model used by organizations when making decisions for innovation and transformation (Heijden. et.al., 2022).

According to the results of the research conducted, currently there are at least 4 (four) new government institutions with the status of Government Institutions and historically most of them were transformations from Non-Ministerial Government Institutions. The further details regarding this matter are as explained in the table below.

Tabel. 4.
**Transformation of Non-Ministerial Government Institutions
into Government Institutions**

No.	Nomenclature of Government Institutions and Legal Basis for Formation	Position of Head of Government Institutions	General Organizational Structure	Explanation
1.	National Cyber and Crypto Agency (Presidential Regulation No. 28 of 2021)	The Head of the National Cyber and Crypto Agency is given financial rights and facilities at the Ministerial level	1. Head 2. Vice Chairman 3. Main Secretariat 4. Deputy 5. Inspectorate	Changing the National Crypto Agency to become a Non-Ministry Government Institution, and some of its duties are merged into the Ministry of Communication and Information Technology
2.	National Food Agency (Presidential	Unregulated	1. Head 2. Main Secretariat	Transformation of one of the work units for middle high

No.	Nomenclature of Government Institutions and Legal Basis for Formation	Position of Head of Government Institutions	General Organizational Structure	Explanation
	Regulation No. 66 of 2021)		3. Deputy. 4. Inspectorate	leadership, namely the Food Security Agency within the Ministry of Agriculture
3.	National Research and Innovation Agency (Presidential Regulation No. 78 of 2021)	The Head of the National Research and Innovation Agency has a ministerial level position	Instructor: 1. Head 2. Vice Chairman 3. Secretary 4. Members Executor: 1. Head 2. Vice Chairman 3. Main Secretariat 4. Deputy 5. Main Inspectorate 6. Research Organization	The result of the merger of several Non-Ministry Government Institutions, namely: 1. Indonesian Institution of Sciences 2. Agency for the Assessment and Application of Technology 3. National Nuclear Energy Agency 4. National Institution of Aeronautics and Space
4.	Government Goods/Services Procurement Policy Institution (Presidential Regulation No. 106 of 2007, and Presidential Regulation No. 157 of 2014, and Presidential Regulation No. 93 of 2022)	The Head of the Government Goods/Services Procurement Policy Agency is a Main High Leadership Position with ministerial-level financial rights and facilities	1. Head 2. Main Secretariat 3. Deputy 4. Inspectorate	Previously, the Government Goods/Services Procurement Policy Agency was a non-ministerial government agency led by the Main High Leader



The existence of this Non-Ministerial Government Institution is due to the President's authority as the head of government, although he does not have attribution or delegation authority to form state institutions with the status of Government Institutions using presidential regulations. Rothstein & Teorell (2008) argues that a coherent and specific quality of government is needed to achieve this quality of government, so that there is impartiality of the government agency implementing government policies. This is considering that there is not a single law above the presidential regulation which gives the President authority to form non-ministerial government institutions. The absence of laws governing the formation of state institutions with the status of government agencies will also cause the subjectivity of the President in forming state institutions with the status of Government Institutions, both in terms of duties, leadership positions, work procedures, number, and size of the institutions. (Organizational structure). In the end, it is not impossible that this will add to the overlapping of tasks, the size, the complexity of the state bureaucracy, and the waste of state finances.

Position of Non-Ministerial Government Institutions in the Indonesian Government System

As already explained, initially Non-Ministerial Government Institutions based on Presidential Decree No. 136 of 1998 was formed to carry out general government tasks and general development tasks in supporting the main tasks carried out by the minister. Indirectly it is implied that Non-Ministry Government Institutions are organizations formed to assist the implementation of the minister's main duties, bearing in mind this, the position of Non-Ministerial Government Institutions is automatically under the relevant ministry. However, in its development, the basic reasons for the formation of Non-Ministerial Government Institutions in Presidential Decree No. 103 of 2001 and its amendments and Presidential Decree No. 166 of 2000 and its changes to a wider range, namely "to carry out certain governmental tasks from the President". Until now, there are no statutory regulations that define "certain governmental duties of the President", so that in practice they are still very dependent on the subjective interpretation of the president.

General provisions regarding the reasons for the formation of Non-Ministry Government Institutions also cause variations in the position of Non-Ministerial Government Institutions in the government system of the Republic of Indonesia. Based on the results of the research conducted by the researchers, there are at least 4 (four) types of positions for Non-Ministry Government Institutions, which include:

1. Group I is a Non-Ministry Government Institution that is directly under the President and whose leadership is concurrently the relevant Minister. This type of Non-Ministry Government Institution has consequences for the size of the organizational structure, there is a ministerial organizational structure, and the organizational structure of Non-Ministry Government Institutions, which correlates with the amount of funding for personnel expenditure, capital expenditure, and goods expenditure that must be borne by the state to

- operate these institutions. Non-Ministerial Government Institutions were formed using Presidential Regulation, namely Presidential Decree No. 103 of 2001. Reasons for the formation of Non-Ministry Government Institutions according to Presidential Decree No. 103 of 2001 as amended several times, most recently Presidential Regulation No. 145 of 2015 is to carry out certain governmental tasks from the president, but there is no definition of "certain governmental tasks", so their application is very dependent on the subjectivity and interpretation of the president. As for those included in the category of Group I Non-Ministry Government Institutions, among others (1) the National Land Agency; (2) Tourism and Creative Economy Agency; (3) Investment Coordinating Board; and (4) National Development Planning Agency.
2. Group II is a Non-Ministerial Government Institution that is directly under the President and led by an official at ministerial level but is not concurrently held by the relevant Minister. This type of Non-Ministry Government Institution has the consequence that the size of the organizational structure becomes like a ministry which in the end correlates with the amount of financing for personnel expenditures, capital expenditures, and goods expenditures that must be borne by the state to operate the organization. The Non-Ministerial Government Institutions included in this group II are the National Disaster Management Agency.
 3. Group III is a Non-Ministerial Government Institution which is under the President, responsible through the relevant minister, but whose leadership is at the ministerial level with the same facilities as the minister.
 4. Group IV is a Non-Ministerial Government Institution which is located under the President, is responsible through the relevant minister, which is led by the main high-ranking official. This group is in accordance with the initial aspirations of establishing a Non-Ministry Government Institution through Presidential Decree no. 136 of 1998, and other laws and regulations, namely, to carry out general government tasks and general development tasks in supporting the main tasks carried out by the minister. The Non-Ministerial Government Institutions included in this group IV are (1) the Nuclear Energy Supervisory Agency; (2) Central Bureau of Statistics; (3) Secretariat General of the National Defense Council; (4) National Library; (5) Meteorology, Climatology and Geophysics Agency; (6) National Archives of the Republic of Indonesia; (7) National Population and Family Planning Agency; (8) Geospatial Information Agency; (9) State Administrative Institutions; (10) State Civil Service Agency; (11) National Standardization Body; (12) National Search and Rescue Agency; (13) Maritime Security Agency; (14) Indonesian Migrant Worker Protection Agency; and (15) Food and Drug Supervisory Agency.

Based on this discussion, the legal basis for the formation of Non-Ministerial Government Institutions in groups I, II, and III is contrary to related laws and regulations, especially Law Number 39 of 2008 concerning State Ministries and Law Number 5 of 2014 concerning State Civil Apparatus. Therefore, these Non-Ministry Government Institutions have duplication or overlapping of task implementation with government affairs which are the responsibility of the relevant ministries.



CONCLUSION

Several things can be concluded from the analysis above, namely that Non-Ministry Government Institutions were initially formed by the President based on Presidential Decree No. 136 of 1998 to carry out general government tasks and general development tasks in supporting the main tasks carried out by the minister. This is as stipulated in Law no. 39 of 2008 concerning State Ministries which confirms that Non-Ministry Government Institutions are located under the President and are responsible to the President through the coordinating minister as well as in Law no. 5 of 2014 concerning the State Civil Apparatus which confirms that the leadership of Non-Ministerial Government Institutions is an official with a Main High Leadership Position. Its development, based on Presidential Decree Number 103 of 2001 as amended several times, most recently Presidential Regulation Number 145 of 2015 is to carry out certain governmental tasks from the President, this formulation causes the reasons for the formation of Non-Ministry Government Institutions to become broader and abstract. The absence of a law that specifically regulates Non-Ministry Government Institutions causes the subjectivity of the President in establishing Non-Ministerial Government Institutions as holders of government power. This has led to an unclear legal basis for the formation and institutional variations of Non-Ministry Government Institutions within the Indonesian government system. Furthermore, there is the transformation of several state institutions with the status of Non-Ministerial Government Institutions into Government Institutions, even though until now there is no statutory regulation at the level of the law that provides attribution or delegation of authority to the President to establish state institutions with the status of Government Institutions.

RECOMENDATION

It is necessary to enact a separate law that specifically regulates the formation, scope of tasks (government affairs handled), leadership positions, work procedures, number, and institutional size (organizational structure) of Non-Ministry Government Institutions. The formation of this law needs to be done considering that Non-Ministry Government Institutions are the same as State Ministries which are part of state institutions formed to assist the President in administering state government powers. The regulation of Non-Ministerial Government Institutions in the law is expected to create harmonization and avoid overlapping the implementation of tasks with the State Ministries that have overseen certain government affairs in government as mandated in Law no. 39 of 2008.



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