

## **A Critical Review of the Revision of Law Number 39 of 2008 on State Ministries from the Perspective of the Indonesian Rule of Law and the Principles of Pancasila Democracy**

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**Abstract:** As a country with a constitution as the highest fundamental law, Indonesia regulates and distributes state functions to state power organs, which are then referred to as State Institutions. One of the state institutions regulated in the constitution is the State Ministry Institution, which is governed by Article 17 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, stating that the President is assisted by State Ministers. Article 17 paragraph (4) regulates that the establishment, amendment, and dissolution of state ministries are governed by law. This then became a polemic, because the People's Consultative Assembly (MPR) of the Republic of Indonesia had agreed to the Revision of Law Number 39 of 2008 on State Ministries, with one of the important points of change being the absence of a limit on the number of ministries, so that the number of ministries formed and established by the President is in accordance with the needs of state administration. The issues raised in this scientific article are: First, How to Critically Review and Analyze the Revision of Law Number 39 of 2008 on State Ministries from the Perspective or Doctrine of the Indonesian Rule of Law and the Principles of Pancasila Democracy, and Second, Whether the Revision of Law Number 39 of 2008 on State Ministries is in accordance with the Perspective or Doctrine of the Indonesian Rule of Law and the Principles of Pancasila Democracy. The research method used to address the issues in this scientific article is the normative legal research method with a conceptual approach. The conclusion drawn from the problem-solving answers is: First, that the Perspective or Doctrine of the Indonesian Rule of Law and the Principles of Pancasila were not used as guidelines and were ignored by the State in the process of Revising Law Number 39 of 2008 on State Ministries, and Second, that the Revision of Law Number 39 of 2008 on State Ministries does not yet align with the Perspective or Doctrine of the Indonesian Rule of Law and the Principles of Pancasila Democracy.

**Keywords:** Revision, State Ministry, Rule of Law Indonesia, Pancasila Democracy

### **INTRODUCTION**

As a country governed by a constitution as the highest source of law, Indonesia regulates and distributes the functions of the state among state power organs, which are then referred to as State Institutions. One such institution governed by the Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia (UUD 1945), is the State Ministry Institution, as stipulated in Article 17 paragraph (1) of the 1945 Constitution, which states that the President shall be assisted by Ministers of State[1].

Furthermore, Article 17 paragraph (4) of the 1945 Constitution clearly states that the establishment, amendment, and dissolution of state ministries shall be regulated by law[2]. Thus, the law on state ministries is enacted by the state as positive law concerning the structure and composition of state

ministries as one of the state institutions in Indonesia that functions to assist the President. Currently, Law Number 39 of 2008 concerning State Ministries applies as the prevailing legal regulation related to the State Ministry Institution in Indonesia.

In its development, Law Number 39 of 2008 concerning State Ministries has become a subject of discussion and controversy. This can be seen in various print and electronic media reports, stating that the House of Representatives (DPR) of the Republic of Indonesia has agreed to revise Law Number 39 of 2008 concerning State Ministries[3]. The controversy surrounding the revision of Law Number 39 of 2008 concerns the amendment to Article 15, which specifically regulates the number of ministries to be thirty-four (34). The result of the revision is that the President can now determine the number of ministries as needed for state administration, no longer limited to only 34 ministries as stipulated in the unrevised version of the law[4].

The phrase “no fixed maximum number of State Ministries” along with the phrase “based on the needs of state administration” becomes the focal point of criticism and raises significant questions from various parties. Moreover, the revision process itself has come under scrutiny regarding whether it followed the proper stages of legislation formation as mandated in Law No. 12 of 2011 on the Formation of Laws and Regulations.

In line with political dynamics and the need for regulatory adjustments within the constitutional system, the revision of Law Number 39 of 2008 concerning State Ministries constitutes a strategic step that needs to be critically examined. This change is not merely a formal revision but involves efforts to ensure that the existence and functions of ministries in Indonesia are capable of operating optimally in carrying out their duties in accordance with the fundamental principles of the rule of law and Pancasila democracy.

From the perspective of the Indonesian rule of law, this revision must be able to guarantee that state power is exercised based on prevailing legal norms, ensure the protection of human rights, and prevent the abuse of power. The rule of law in Indonesia demands adherence to the principles of justice, legal certainty, and checks on power to avoid overlaps and excesses. If this revision is not carried out carefully and thoroughly, it may risk causing disorder in the governmental structure, potentially violating these principles and even threatening the sustainability of the principle of legal supremacy itself.

This becomes the rationale or background for the need to conduct a study on this matter, particularly from the perspective of the Indonesian Rule of Law and the Principles of Pancasila Democracy as foundational doctrines of Indonesian Constitutional Law. Based on the above background, this article examines a critical review and analysis of the Revision of Law Number 39 of 2008 concerning State Ministries in the perspective or doctrine of the Indonesian Rule of Law and the Principles of Pancasila Democracy, and whether the revision of Law Number 39 of 2008 concerning State Ministries aligns with the perspective or doctrine of the Indonesian Rule of Law and the Principles of Pancasila Democracy.

## RESEARCH METHOD

The research method used in this scientific article is the Normative Legal Research Method. Normative legal research is a legal study that examines law as a set of norms or rules prevailing in society, which serve as behavioral guidelines for every individual[20]. The approach used to address the issues in this article is a conceptual approach, which involves the use of legal doctrines and perspectives that have developed within the discipline of law[21].

The data collection method was conducted through literature study, which includes official documents such as statutory texts, presidential regulations, and documents related to the revision of the law in question, as well as scientific literature, books, and relevant journals. Data collection also involved analysis of academic journals and articles discussing legal and governmental reform in Indonesia.

Data analysis was carried out descriptively and interpretatively using a content analysis approach, aiming to identify and evaluate critical aspects of the law revision from the perspective of the rule of law and the principles of Pancasila democracy. Data validation techniques were conducted through cross-checking between documents and literature, and by strengthening the validity of findings through source triangulation or references.

By employing this approach, the study is expected to provide a comprehensive and in-depth understanding of the analysis of the law revision within the framework of national legal development and Indonesia's democracy based on Pancasila values.

## RESULT AND DISCUSSION

### **A Critical Review of the Revision of Law Number 39 of 2008 concerning State Ministries in the Perspective of the Indonesian Rule of Law and the Principles of Pancasila Democracy**

In general, the concept of the Indonesian rule of law shares some elements with other rule-of-law systems. However, Indonesia has formulated its own unique concept of the rule of law based on the state's ideals as contained in its national ideology, Pancasila. Thus, Indonesia's concept of the rule of law possesses distinctive characteristics different from others: it is based on the Pancasila ideology, a constitutional system, popular sovereignty, equality before the law, judicial independence, the formal process of legislation, and a system of representation[22].

Regarding the principles of Pancasila democracy—whose essence lies in the will and interests of the people—in the context of the revision of Law Number 39 of 2008 on State Ministries, meaningful public participation in the legislative process is an obligation that must be fulfilled by the state or government. Furthermore, a truly representative House of Representatives is a prerequisite for the implementation of Pancasila democracy, where the interests of the people are paramount. Given the rapid pace of the revision process of the aforementioned law, it can be conceptually concluded that the revision lacks meaningful public participation, and therefore, does not (yet) comply with the principles of Pancasila democracy.

The critical review of the revision of Law Number 39 of 2008 on State Ministries reveals several inconsistencies with the foundational principles of the Indonesian rule of law. The core of the rule of law is that law must serve as the highest authority guaranteeing justice, legal certainty, and accountability. However, the provisions in this law—particularly regarding the continuity of ministries after enactment—do not appear to have a clear mechanism to ensure transparency and accountability in the restructuring process. Additionally, the law seems to prioritize administrative efficiency over broader constitutional mandates, such as the protection of citizens' rights and the supremacy of law[23].

The visible gap in the revision of this law threatens the realization of the rule of law, as it emphasizes the need for laws to be applied consistently and fairly. This highlights the need for strict alignment between legislative changes and constitutional principles. Thus, even if the revision aims to improve governance, the process may undermine legal certainty and justice—core elements in the framework of Indonesia's rule of law.

From the perspective of Pancasila democracy, the alignment of Law Number 39 of 2008 with the values of deliberation, social justice, and popular sovereignty must be examined. These values, derived from Pancasila as the fundamental philosophy of the Indonesian state, emphasize consensus and deliberation in decision-making—crucial for democratic legitimacy. However, the revision approach appears top-down, with very limited public involvement or citizen engagement, which potentially contradicts the ideals of Pancasila democracy.

Substantively, the revision of this law may reduce the legislative and judicial branches' oversight over the executive. The Checks and Balances system, which is the cornerstone of Indonesia's constitutional democracy—as adopted from the theories of Tearle and McGregor—may be jeopardized if the revision excessively concentrates power in the executive branch without strong oversight mechanisms. This opens the door to abuse of power, even the potential rise of oligarchic practices that erode Pancasila democracy, which places the people as the source of power[24].

Moreover, the revision process appears to focus primarily on administrative continuity without due regard to social justice and meaningful civic participation. This may result in policies favoring bureaucratic interests over the public good. Therefore, a re-evaluation of this law revision is necessary to better reflect the principles of Pancasila democracy, rooted in consensus, social justice, and the collective interest of citizens rather than merely administrative convenience.

The revision of Law Number 39 of 2008 concerning State Ministries must be critically analyzed for its compliance with the foundational principles of the Indonesian rule of law and Pancasila democracy. The

main principles of the Indonesian rule of law are justice, legal certainty, and the protection of human rights, which must be consistently implemented in both the legislative process and the structuring of state institutions. In the context of Pancasila democracy, the foundation of Indonesia's government system lies in public participation, consensus-building, and social justice[25].

From a procedural standpoint, this law revision was conducted quickly and somewhat opaquely, with minimal participation from the public and related institutions. This contradicts the transparency principle mandated by Pancasila democracy and the provisions of Article 28J of the 1945 Constitution, which affirms every citizen's right to be heard and involved in policymaking. If the legislative process lacks participatory and accountable mechanisms, then procedural justice—a key tenet of Indonesia's rule of law—is not fulfilled, resulting in policies that lack legitimacy and are disconnected from public aspirations[26].

Furthermore, the revised Law Number 39 of 2008 lacks clear provisions safeguarding the principles of popular sovereignty and the supremacy of law—both reinforced in the 1945 Constitution and democratic principles. The gaps in this revision may lead to ambiguities in implementation, raising concerns that administrative restructuring of ministries could proceed without democratic participation or adequate legal safeguards[27].

A major contradiction is evident in the revision, which prioritizes administrative continuity while compromising democratic oversight and public engagement—fundamental components of Indonesia's identity as a Pancasila-based democracy. To address these issues, a comprehensive legal review is needed to ensure that the legal framework supports the rule of law and democratic values enshrined in Pancasila and promotes a more participatory and equitable system of governance.

Moreover, the foundation of the Pancasila-based government system is the continuity of just and civilized democracy. Legislative changes must guarantee the sustainability of citizens' rights to supervision and participation in decision-making. Therefore, it is essential to ensure that every legal revision reflects a balance between formal legal aspects and Pancasila values as the national ideology. If the revision accommodates the need for reform while upholding these core principles, it can be considered a proportional and constitutional legislative process[28].

Finally, regarding the revision of Law Number 39 of 2008 on State Ministries—when examined from the perspective of the Indonesian rule of law, particularly in terms of national legal formation grounded in neutral and universal legal principles—the revision must be based on values acceptable to all interests. In other words, the revision must open space for broad public participation, ensuring the law is not designed only for certain groups or favoring specific interests. It must have a clear purpose and be aligned with reason and human rationality. Most importantly, the revision must be oriented solely toward the public interest.

In reality, however, meaningful public participation was minimal, and the changes did not reflect the aspirations or interests of the people. The law was drafted in a short timeframe with limited transparency or public dissemination of the revision stages. Therefore, it can be concluded that the revision of the law does not yet comply with the principles of the Indonesian rule of law.

## CONCLUSION

Based on the foregoing discussion, it can be concluded that in relation to the revision of Law Number 39 of 2008 concerning State Ministries, when examined within the context of the Indonesian rule of law—particularly grounded in the elements of national legal formation based on neutral and universal legal principles—it can be concluded that the revision of the law does not, or has not yet, aligned with the principles of the Indonesian rule of law.

Furthermore, regarding the explanation of the principles of Pancasila democracy—where the will and interests of the people constitute its essential core—in the context of the revision of Law Number 39 of 2008 concerning State Ministries, public participation in the legislative process is an obligation that must be fulfilled by the state or government. In addition, a representative House of Representatives is a prerequisite for the realization of Pancasila democracy, and the people's interests are paramount in the

process of governance. Therefore, it can be concluded that the revision of the law does not, or has not yet, conformed to the principles of Pancasila democracy.

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