



JIHP:
Jurnal Ilmu Hukum, Humaniora dan Politik

E-ISSN: 2747-1993
P-ISSN: 2747-2000

<https://dinastirev.org/JIHP> dinasti.info@gmail.com +62 811 7404 455

DOI: <https://doi.org/10.38035/jihhp.v6i4>
<https://creativecommons.org/licenses/by/4.0/>

Legal Analysis of the Violation of Concurrent Office by Ministers and Deputy Ministers Under Article 23 of Law No. 39 of 2008 on State Ministries

Mohamad Candra Oktavian N¹, Zainal Arifin², Saivol Virdaus³.

¹ Universitas Islam Kadiri, Indonesia, mohamadcandra@student.uniska-kediri.ac.id

² Universitas Islam Kadiri, Indonesia, zainal.fh@uniska-kediri.ac.id

³ Universitas Islam Kadiri, Indonesia, saivol@uniska-kediri.ac.id

Corresponding Author: mohamadcandra@student.uniska-kediri.ac.id¹

Abstract: Dual office-holding by ministers and deputy ministers constitutes a legal issue with direct consequences for the quality of governance in Indonesia. This study aims to analyze the legal provisions prohibiting dual positions under Article 23 of Law No. 39 of 2008 on State Ministries, and to examine the legal consequences arising from violations thereof by ministers and deputy ministers. A normative legal research method is employed, utilizing a statutory approach and a conceptual approach, grounded in the theoretical framework of good governance and clean government. The findings reveal that Article 23 expressly prohibits ministers from concurrently serving as commissioners or directors of companies, other state officials, or leaders of organizations funded by the state budget, with the prohibition extended to deputy ministers through Constitutional Court Decision No. 128/PUU-XXIII/2025. Violations of this provision result in three dimensional legal consequences: administratively, through the nullity of legal acts and dismissal from office under the *contrarius actus* principle; civilly, through liability for unlawful governmental acts (*onrechtmatige overheidsdaad*); and criminally, through potential corruption liability where violations are accompanied by the abuse of authority causing financial losses to the state. This study concludes that the absence of explicit sanction provisions in the State Ministries Law undermines enforcement effectiveness, and therefore recommends an amendment to Article 23 incorporating explicit sanctions, strengthened institutional oversight, and mandatory periodic disclosure of positions held.

Keyword: Dual Positions, Minister and Deputy Minister, Article 23 of Law No. 39 of 2008, Good Governance and Clean Government, Legal Consequences.

INTRODUCTION

The Republic of Indonesia's constitutional system adopts a presidential system, wherein the Head of State and Head of Government are the functions of the President as the nation's leader. In carrying out his duties, the President relies on the assistance of Ministers and Deputy Ministers, as stipulated in Indonesian positive law, specifically Article 1, Paragraph 2 of Law No. 39 of 2008 on State Ministries (hereinafter referred to as the State Ministries Law): "A State

Minister, hereinafter referred to as a Minister, is an assistant to the President who heads a Ministry” (Indonesia, 2008). Ministers and Deputy Ministers are state officials tasked with the administration of government affairs. Their strategic role is specifically accommodated in the State Ministries Law, which aims to carry out government affairs with accountability, professionalism, and effectiveness. Therefore, the principles of Good Governance and Clean Government regarding the regulation of the position, duties, and prohibitions for Ministers and Deputy Ministers are crucial aspects in upholding and carrying out their official duties.

Pursuant to Article 23 of the Ministry of State Administration Law, there are specific prohibitions against Ministers and Deputy Ministers holding certain concurrent positions such as serving as officials in other government agencies, commissioners, directors, or other roles that could result in conflicts of interest. These provisions are intended to prevent the abuse of authority, ensure the proper focus on the Ministry’s duties, and safeguard the independence and integrity of government officials.

However, in the practice of state administration, the issue of ministers simultaneously holding the positions of deputy minister has become both a legal debate and a public controversy. In President Prabowo Subianto’s “Red and White” Cabinet, there are alleged or actual instances where Ministers and Deputy Ministers hold other positions outside the scope of the law, whether in state owned enterprises (SOEs) or within specific organizational structures. Such situations can spark controversy regarding legal certainty, the enforcement of the prohibition on holding dual positions, and the legal consequences that should be imposed for such violations.

Article 23 of the Ministry of State Apparatus Law, which addresses the mechanisms for sanctions and legal consequences in the event of a violation of the prohibition on holding multiple positions, is deemed to lack clarity regarding further regulations. This lack of clarity has the potential to lead to multiple interpretations, inconsistencies in the application of the law, and a weakening of the principle of the Supremacy of Law in the administration of government. Ideally, in a state governed by the rule of law, every violation of legal norms must have clear, concrete, and enforceable legal consequences.

Therefore, a comprehensive legal study is needed to analyze the legal provisions regarding the prohibition on ministers holding concurrent positions as deputy ministers, as accommodated in Article 23 of the Ministry of State Administration Law, as well as to examine the legal consequences arising if these provisions are violated. This research is expected to contribute to the academic field of constitutional law and serve as a basis for policymakers in strengthening regulations and law enforcement regarding the concurrent holding of the positions of Minister and Deputy Minister in Indonesia.

METHOD

The study on the legal analysis of alleged violations of the prohibition on holding dual positions as Minister and Deputy Minister under Article 23 of the Ministry of State Apparatus Law employs normative legal research, focusing on the examination of norms, principles, and legal rules as they exist within the legal system. The sources of analysis are derived from various legal materials, including effective regulations, judicial decisions, and the views of legal experts with scholarly authority in the relevant field.

Legal Materials

Primary Legal Materials

In this case, the primary legal sources used are data obtained from Law No. 39 of 2008 on the Ministry of State, and the decision of the Constitutional Court of the Republic of Indonesia regarding the Review of Law No. 39 of 2008 on the Ministry of State against the 1945 Constitution of the Republic of Indonesia, case number 128/PUU-XXIII/2025.

Secondary Legal Sources

In this case, the secondary legal sources used include several books, scientific journals, scholarly opinions, legal cases, and research conducted by relevant experts. Secondary legal materials in this study serve as non-binding legal sources that can elucidate primary legal materials (Benuf et al., 2019), such as: explanations of laws and regulations, academic literature, scientific journals, research articles, and various other references relevant to the topic under examination. Additionally, the views of legal experts, along with the from previous research, serve as the theoretical foundation or comparative aspect to strengthen the analysis conducted.

Non-Legal Materials

Non-legal materials provide guidance or explanations for primary and secondary legal materials. These include language dictionaries, legal dictionaries, and other supporting materials.

RESULTS AND DISCUSSION

Legal Provisions Regarding the Prohibition on Concurrent Positions for Ministers and Deputy Ministers Based on Article 23 of Law No. 39 of 2008

The Normative Framework of the Prohibition on Holding Multiple Positions in the Indonesian Constitutional System

Regulations regarding the prohibition of holding concurrent offices for public officials are an important manifestation of the principle of separation of powers, which serves as the foundation of the modern constitutional system. In the Indonesian context, this principle is implicitly contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which adopts a presidential system with a division of powers among the executive, legislative, and judicial branches. Jimly Asshiddiqie explains that under the presidential system adopted by Indonesia following the 1999–2002 constitutional reforms, executive power rests entirely with the President, who is assisted by state ministers; thus, each minister is accountable to the President and is prohibited from having dual loyalties that could arise from holding concurrent positions (Asshiddiqie, 2006). This principle explicitly reinforces the urgency of the norm prohibiting holding multiple positions as a means of safeguarding institutional integrity and the professionalism of government officials at the ministerial level.

From a normative hierarchical perspective, the prohibition on ministers simultaneously holding the position of deputy minister is derived from Article 17 of the 1945 Constitution of the Republic of Indonesia, which establishes that ministers serve as assistants to the President. This provision is further elaborated in the Ministry of State Apparatus Law, which comprehensively addresses all institutional aspects of the ministry, ranging from its establishment, primary duties and functions, to the requirements and prohibitions for ministers. Article 23 of the Ministry of State Apparatus Law explicitly stipulates that a minister is not permitted to hold concurrent positions as: (a) another state official as defined by laws and regulations; (b) a commissioner or director in a state-owned or private company; and (c) the head of an organization that receives funding through the State Revenue and Expenditure Budget (hereinafter referred to as the APBN) and/or the Regional Revenue and Expenditure Budget (hereinafter referred to as the APBD) (Indonesia, 2008). The formulation of this provision is enumerative and reflects the legislature's intent to strictly limit the potential for conflicts of interest inherent in the role of a minister as a holder of public authority.

Substantively, the prohibition on holding concurrent positions in Article 23 of the Ministry of State Administration Law encompasses three interrelated legal dimensions. First, the institutional dimension, namely that the position of minister demands full dedication and therefore cannot be held concurrently with another position that is structurally equivalent or even has the potential to create a conflict of authority. Second, the economic dimension, namely

that the prohibition on holding concurrent positions as a commissioner or director aims to prevent a minister from using their authority to benefit the business entity in which they hold a position. Third, the socio-political dimension: the prohibition against serving as a chairperson of an organization funded through the State Budget (APBN) or Regional Budget (APBD) is intended to prevent the politicization of state financial management (Huda, 2014). From the perspective of administrative law theory, these three dimensions align with the principle of “*detournement de pouvoir*” (abuse of authority), which prohibits public officials from using their authority for purposes other than those prescribed by law (Hadjon & Djatmiati, 2005).

The prohibition on holding concurrent positions, originally established for ministers, was subsequently extended by analogy to apply to deputy ministers. This extension is based on Presidential Regulation No. 60 of 2012 on Deputy Ministers, which states that a deputy minister is a career official who has the authority to assist the minister in leading the execution of various ministerial tasks. Subsequently, the Constitutional Court, through Decision No. 79/PUU-IX/2011, affirmed the constitutionality of the position of deputy minister within Indonesia’s presidential system of government, and implicitly recognized that all norms effectively applicable to ministers including the prohibition on holding concurrent positions also apply to deputy ministers (RI, 2011). This constitutional interpretation broadens the scope of Article 23 of the Ministry of State Administration Law to include deputy ministers as well, even though the text of the Article only mentions “ministers.”

The Relationship Between the Prohibition on Holding Multiple Positions and the Principle of Good Governance

The principles of good governance, as defined by the United Nations Development Programme, consist of eight key characteristics: participation, transparency, the rule of law, consensus, responsiveness, effectiveness and efficiency, equity, and accountability. Among these characteristics, the principles of accountability and the rule of law have the most direct relevance to the issue of prohibiting the holding of multiple offices. Accountability requires that every public official be able to account for their decisions and actions to the public, while the rule of law demands that every government official strictly adhere to regulations without exception (Programme, 1997). Holding multiple positions inherently weakens these two principles because it creates ambiguity regarding accountability and opens a loophole for an individual to evade accountability by hiding behind the authority of another position.

In the context of Indonesian positive law, the principle of good governance has been incorporated into the General Principles of Good Governance (hereinafter referred to as AUPB) pursuant to Law No. 30 of 2014 on Government Administration (hereinafter referred to as the Government Administration Law). Article 10 states the following principles: legal certainty, impartiality, public benefit, non-abuse of authority, diligence, the public interest, transparency, and quality of service. The prohibition on holding multiple positions is a concrete implementation of the principles of non-abuse of authority and impartiality, as an individual holding multiple positions risks becoming biased in decision-making if the interests of one position conflict with those of another (Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, 2014). According to Ridwan HR, the principle of not abusing authority requires each public official to exercise their authority solely for the purposes for which such authority was granted, not for other interests of a personal or institutional nature (HR., 2018).

A comparative study of practices in other countries shows that prohibiting ministers from holding concurrent positions is a universal norm in democratic governance systems based on good governance. In France, the 1958 Constitution explicitly prohibits members of the government from simultaneously serving as members of parliament, corporate commissioners, or holding other professional positions. In South Korea, the Government Organization Act establishes a similar prohibition for ministers and officials of equivalent rank. Meanwhile, in

Malaysia, the Federal Constitution and ministers are bound by provisions prohibiting them from engaging in commercial activities while in office (Khatib, 2021). This comparison confirms that the provisions of Article 23 of the State Ministry Law are not isolated but part of a global regulatory trend aimed at ensuring the integrity and professionalism of high-level executive officials.

The Dimension of Clean Government in the Norm Prohibiting Dual Officeholding

The concept of clean government fundamentally refers to a government that is free from corruption, collusion, and nepotism, as well as various other forms of misconduct that undermine the integrity of state administration. Sedarmayanti emphasizes that clean government is a fundamental prerequisite for the creation of good governance, because without a clean government, the principles of good governance cannot be realized in practice (Sedarmayanti, 2012). Within this framework, the prohibition on holding multiple positions serves as a preventive mechanism that proactively breaks the chain of potential structural corruption stemming from conflicts of interest. Robert Klitgaard posits that corruption thrives in conditions where a monopoly of power intersects with high discretion and low accountability a combination that is potentially created when an individual holds more than one strategic position simultaneously (Klitgaard, 1988).

Analysis of various cases of holding multiple positions in Indonesia reveals a recurring pattern where officials holding multiple positions tend to prioritize the interests of the position offering greater material or political benefits, thereby sacrificing the effectiveness of their performance in the other positions. Dwiyanto’s research reveals that one of the primary sources of Indonesia’s poor bureaucracy is the low level of professionalism among civil servants, which is partly caused by the practice of holding multiple positions that blurs the line between public interests and personal or group interests (Dwiyanto, 2011). In the context of clean government, the unauthorized holding of multiple positions is not only a formal legal violation but also an ethical violation that erodes public trust in government institutions a form of social capital that is invaluable for the smooth functioning of the state.

Data and Cases of Dual Office Violations by Ministers and Deputy Ministers Under Article 23 of Law No. 39 of 2008 on State Ministries

Table 1. Data on Violations of Holding Multiple Positions During President Jokowi’s Era, the Indonesia Maju Cabinet (2019–2024)

Official’s Name	Primary Position	Concurrent Position	Article 23 Category
Luhut B. Pandjaitan	Coordinating Minister for Maritime Affairs and Investment	Vice Chair of KPC-PEN & various strategic positions	Other State Officials
Kartika Wirjoatmodjo	Deputy Minister of State-Owned Enterprises II	Chairman of the Board of Commissioners of Bank Mandiri (Dec 2019)	Commissioner of State-Owned Enterprises
Dante Saksono H.	Deputy Minister of Health	Commissioner of PT Pertamina Bina Medika (Jun 2023)	Commissioner of a State-Owned Enterprise
Erick Thohir	Minister of State-Owned Enterprises	Chairman of the Indonesian Football Association	Organization Leader
Nezar Patria (Jokowi)	Deputy Minister of Communications and Information Technology	President Commissioner of PT Indosat Tbk	Commissioner of State-Owned Enterprises

Source: Research Data

Table 2. Data on Conflicts of Interest During President Prabowo's Term, Red and White Cabinet (2024–2025)

No.	Official's Name	Primary Position (Deputy Minister)	Concurrent Position (State-Owned Enterprise Commissioner)
1	Angga Raka Prabowo	Deputy Minister of Digital Economy	Chief Commissioner of PT Telkom Indonesia (Persero) Tbk
2	Nezar Patria	Deputy Minister of Communications and Information Technology	Chairman of the Board of Commissioners of PT Indosat Tbk (ISAT)
3	Fahri Hamzah	Deputy Minister of Housing and Human Settlements	Commissioner of PT Bank Tabungan Negara (BTN)
4	Suahasil Nazara	Deputy Minister of Finance	Commissioner of PT PLN (Persero)
5	Kartika Wirjoatmodjo	Deputy Minister of State-Owned Enterprises	Chairman of the Board of Commissioners of PT Bank Rakyat Indonesia Tbk
6	Yuliot Tanjung	Deputy Minister of Energy and Mineral Resources	Commissioner of PT Bank Mandiri (Persero) Tbk
7	Sudaryono	Deputy Minister of Agriculture	President Commissioner of PT Pupuk Indonesia (Persero)
8	Giring Ganesha	Deputy Minister of Culture	Commissioner of PT Garuda Maintenance Facility Aero Asia Tbk
9	Taufik Hidayat	Deputy Minister of Youth and Sports	Commissioner of PT PLN Energi Primer Indonesia
10	Stella Christie	Deputy Minister of Higher Education, Science, and Technology	Commissioner of PT Pertamina Hulu Energi
11	Diana Kusumastuti	Deputy Minister of Public Works	Chairman of the Board of Commissioners of PT Brantas Abipraya (Persero)
12	Donny Ermawan T.	Deputy Minister of Defense	President Commissioner of PT Dahana (Persero)
13	Silmy Karim	Deputy Minister of Immigration and Corrections	Commissioner of PT Telkom Indonesia (Persero) Tbk
14	Ossy Dermawan	Deputy Minister of Agrarian Affairs and Spatial Planning/National Land Agency	Commissioner of PT Telkom Indonesia (Persero) Tbk
15	Didit Herdiawan A.	Deputy Minister of Marine Affairs and Fisheries	President Commissioner of PT Perikanan Indonesia
16	Suntana	Deputy Minister of Transportation	President Commissioner of PT Pelabuhan Indonesia (Pelindo)
17	Dante Saksono H.	Deputy Minister of Health	Commissioner of PT Pertamina Bina Medika
18	Christina Aryani	Deputy Minister of P2MI / Deputy Head of BP2MI	Commissioner of PT Semen Indonesia (Persero) Tbk
19	Diaz Hendropriyono	Deputy Minister of Environment	President Commissioner of PT Telekomunikasi Seluler (Telkomsel)

No.	Official's Name	Primary Position (Deputy Minister)	Concurrent Position (State-Owned Enterprise Commissioner)
20	Ahmad Riza Patria	Deputy Minister of Villages and Regional Development	Commissioner of PT Telekomunikasi Seluler (Telkomsel)
21	Dyah Roro Esti W.P.	Deputy Minister of Trade	President Commissioner of PT Sarinah (Persero)
22	Todoetua Pasaribu	Deputy Minister of Investment and Downstreaming/BKPM	Deputy President Commissioner of PT Pertamina (Persero)
23	Ratu Isyana B. Oka	Deputy Minister of Population and Family Planning	Commissioner of PT Dayamitra Telekomunikasi Tbk (Mitratel)
24	Juri Ardiantoro	Deputy Minister of State Secretary	President Commissioner of PT Jasa Marga (Persero) Tbk
25	Immanuel E. Gerungan	Deputy Minister of Manpower	Commissioner of PT Pupuk Indonesia (Persero)

Source: Research Data

Legal Consequences Arising if the Minister and Deputy Minister Violate the Prohibition on Holding Multiple Positions

Legal Consequences in the Realm of Administrative Law

Violations of the prohibition on holding concurrent positions as stipulated in Article 23 of the Ministry of State Administration Law give rise to legal consequences, first and foremost within the realm of administrative law. From a doctrinal perspective, the most direct administrative legal consequence is the nullity or potential nullity of legal acts performed by an official in a position held concurrently in an unlawful manner. Philipus M. Hadjon explains that any governmental act performed beyond the bounds of lawful authority including authority derived from a position held in violation of the law contains a legal defect that may render such an act null and void by operation of law (*nietig van rechtswege*) or, at the very least, subject to annulment (*vernietigbaar*) through applicable legal procedures (Hadjon, 1993).

In addition to the nullification of the legal act, the subsequent administrative legal consequence is the sanction of removal from office. Based on the principle of *contrarius actus* in administrative law, the body authorized to appoint an official also has the authority to dismiss them if a violation of the requirements of the position is proven. In the context of ministers, the President, as the appointing authority, possesses the constitutional authority to dismiss a minister proven to have violated Article 23 of the State Ministry Law. However, it should be noted that the State Ministries Law does not explicitly regulate detailed administrative sanction mechanisms for violations of the prohibition on holding concurrent positions, so its enforcement is highly dependent on the political will of the President as head of government (Marbun, 2018). The absence of this structured sanction mechanism constitutes a normative weakness that requires serious attention from the legislature.

From the perspective of the theory of state liability, holding multiple positions that result in harm to third parties or the public may also give rise to civil liability on the part of the state. Article 1365 of the Civil Code states: any act that causes harm to another person requires the perpetrator to compensate for such harm. If a minister who holds a concurrent position as a company director makes a decision that benefits the company by using the authority of the Ministry for example, through the issuance of permits or government contracts then the state may be held liable for an unlawful act by a public official (*onrechtmatige overheidsdaad*) as provided for under Indonesian administrative law (Susanto, 2019).

Legal Consequences from a Criminal Law Perspective

Holding multiple positions, particularly when accompanied by the abuse of authority for personal or group gain, may fall under criminal law, specifically corruption. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Offenses (hereinafter referred to as the Anti-Corruption Law) criminalizes acts by civil servants or state officials who misuse the resources, opportunities, or authority inherent in their positions to benefit themselves or others, provided such acts cause financial or economic harm to the state (Undang-Undang Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, 2001). A minister who also serves as a director or commissioner of a company and then uses his or her ministerial position to provide business facilitation, permits, or projects to that company can easily satisfy several elements of the offense under Article 3 of the Anti-Corruption Law.

Furthermore, in the context of holding concurrent positions within organizations funded by the State Budget (APBN) or Regional Budget (APBD), the potential criminal liability also encompasses offenses related to the management of state finances. A minister who also holds a leadership position in an organization receiving grants or funds from the government such as a foundation, business entity, or non-profit organization funded by the State Budget has the potential to commit criminal acts related to the management of state finances under Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on the State Treasury (Widjajanta & Widyaningsih, 2020). Indriyanto Seno Adji emphasized that under Indonesian criminal law, holding multiple positions that create a conflict of interest is not classified as a standalone offense, but serves as an element that strengthens the proof of the abuse of authority component in corruption offenses (Seno Adji, 2009).

Implications for the Principles of Good Governance and Institutional Accountability

Beyond the formal legal dimension, violations of the prohibition on holding multiple positions also result in legal consequences of a constitutional nature in a broader sense, namely the erosion of public trust in government institutions. In the theory of the legitimation of power, Max Weber distinguishes three types of legitimation: traditional, charismatic, and rational-legal. Modern governance based on good governance relies on rational legal legitimacy, wherein the authority of state officials is recognized because they act in accordance with applicable laws (Weber, 1978). When a minister or deputy minister violates the prohibition on holding multiple offices, the government's rational-legal legitimacy is eroded, as the public perceives that state officials are not subject to the same laws that bind ordinary citizens. This erosion of legitimacy, in turn, weakens the government's capacity to implement public policies effectively.

From the perspective of institutional theory, violations of the norm prohibiting dual office-holding that are not met with firm legal enforcement risk setting a harmful precedent that undermines the norm itself. Douglass North explains that institutions including legal norms can only function effectively if there are consistent and predictable enforcement mechanisms (North, 1990). If violations of Article 23 of the State Ministries Law are allowed to go unpunished without tangible legal consequences, the norm will lose its binding force and ultimately become merely a symbolic norm devoid of substantive meaning. This situation is diametrically opposed to the principle of the rule of law, which is one of the main pillars of good governance.

Normative Weaknesses and Efforts to Improve Regulations

An analysis of the provisions of Article 23 of the State Ministry Law reveals several normative weaknesses that have the potential to hinder the effectiveness of enforcing the prohibition on holding multiple positions. First, the absence of explicit, clear, and measurable

sanctions in the law creates a legal vacuum (*leemten in het recht*) that opens the door to non-compliance. Second, the oversight mechanisms regarding compliance with the prohibition on holding multiple positions are not systematically regulated, thus relying on the oversight initiatives of various distinct institutions, such as the KPK, the Ombudsman, and the Regional People's Representative Council (DPRD) through their investigative powers (Nasution, 2015). Third, the absence of a requirement for ministers to submit periodic reports on the positions they hold makes it difficult to detect potential conflicts of interest early on. These weaknesses indicate that existing regulations do not yet fully meet good governance standards regarding transparency and accountability.

By comparison, several sectoral laws in Indonesia have established stricter penalties for violations of the prohibition on holding multiple positions. Law No. 40 of 2007 on Limited Liability Companies, for example, provides detailed provisions regarding the prohibition on holding multiple positions for directors and commissioners, accompanied by clear legal consequences in the form of personal liability for company losses. Similarly, Law No. 21 of 2011 on the Financial Services Authority explicitly prohibits holding multiple positions for OJK officials and establishes measurable administrative sanctions (Tjandra, 2014). A comprehensive regulatory approach such as this should serve as a reference in efforts to revise Article 23 of the Ministry of State Law so that the prohibition on holding concurrent positions for ministers and deputy ministers is not merely declaratory but truly possesses effective enforcement power.

Within the framework of regulatory reform, there are at least three strategic steps that need to be taken. First, an amendment to Article 23 of the Ministry of State Law is necessary to add explicit, measurable, and proportional sanction provisions, including administrative sanctions such as dismissal, financial sanctions such as the return of profits obtained from holding dual positions, and a mechanism for public reporting. Second, an integrated oversight mechanism must be established involving the KPK, the Ombudsman, and other independent oversight agencies with clear and non-overlapping authorities (Prasetya, 2022). Third, ministers and deputy ministers must be required to periodically disclose the positions they hold to the public as an implementation of the principle of openness in government administration. According to Bappenas in the National Bureaucratic Reform Document, active transparency is one of the key indicators of the success of bureaucratic reform that supports the realization of a clean government in Indonesia (Birokrasi, 2020).

CONCLUSION

First, the legal provisions regarding the prohibition on holding concurrent positions as both a minister and a deputy minister, as set forth in Article 23 of the Ministry of State Administration Law, have a normative framework that adequately embodies the principles of good governance and clean government within Indonesia's constitutional system. This prohibition covers three categories of positions that may not be held concurrently: positions as officials in other government agencies, positions as commissioners or directors of state-owned or private companies, and positions as heads of organizations funded by the State Budget (APBN) and/or Regional Budget (APBD). This prohibition has been constitutionally reinforced by Constitutional Court Decision No. 128/PUU-XXIII/2025, which explicitly applies to deputy ministers. This norm constitutes a concrete implementation of the principles of non-abuse of authority, impartiality, and accountability as enshrined in the Law on Government Administration. However, the normative force of Article 23 contains a fundamental weakness, namely the absence of explicit and measurable sanctions provisions and the lack of a systematic compliance oversight mechanism, thereby creating a legal vacuum (*leemten in het recht*) that has, in fact, enabled massive and repeated instances of holding multiple positions, as evidenced in the practice of cabinet formation during the administrations of both President Jokowi and President Prabowo.

Second, violations of the prohibition on holding concurrent offices under Article 23 of the Ministry of State Administration Law give rise to legal consequences that are multidimensional in nature. In the realm of administrative law, legal actions taken through an office held concurrently in an unlawful manner are legally defective and may be null and void under the principle of *contrarius actus*; furthermore, the official in question may be subject to dismissal from office by the appointing authority. In the civil law dimension, holding multiple positions that causes harm to third parties or the state may give rise to liability for unlawful acts by public officials (*onrechtmatige overheidsdaad*). Meanwhile, in the criminal law dimension, if the holding of multiple positions is accompanied by an abuse of authority such as acting for personal gain or the gain of others and causing financial loss to the state then this act may satisfy the elements of a corruption offense as provided for in the Anti-Corruption Law. These three dimensions of legal consequences essentially reflect that violations of the prohibition on holding concurrent offices are not merely administrative violations, but a real threat to the integrity of state administration that is diametrically opposed to the ideals of good governance and clean government, which form the constitutional foundation of Indonesia's system of government.

REFERENCES

- Asshiddiqie, J. *Development and Consolidation of State Institutions Post-Reform*. Secretariat General and Registry of the Constitutional Court of the Republic of Indonesia, 2006.
- Bureaucracy, Ministry of State Apparatus Empowerment and Reform. "Roadmap Bureaucratic Reform 2020–2024," 2020. <https://www.menpan.go.id/site/reformasi-birokrasi/roadmap-rbni-2020-2024>.
- Dwiyanto, A. *Restoring Public Trust Through Bureaucratic Reform*. Gramedia Pustaka Utama, 2011.
- FH UII Press, 2018.
- Hadjon, P M. *Introduction to Indonesian Administrative Law*. Gadjah Mada University Press, 1993.
- HR., Ridwan. *State Administrative Law*. Revised edition. RajaGrafindo Persada, 2018.
- Huda, N. *Indonesian Constitutional Law*. Revised edition. RajaGrafindo Persada, 2014.
- Khatib, A. "Comparative Analysis of Ministerial Conflict of Interest Regulations in ASEAN." *Asian Journal of Comparative Law* 16, no. 2 (2021): 245–68. <https://doi.org/10.1017/asjcl.2021.10>.
- Klitgaard, R. *Controlling Corruption*. University of California Press, 1988.
- Marbun, S F. *State Administrative Justice and Administrative Remedies in Indonesia*. 3rd ed.
- Nasution, B. J. "Public Official Accountability from the Perspective of Administrative Law." *Journal of Law and Judiciary* 4, no. 2 (2015): 201–18. <https://doi.org/10.25216/jhp.4.2.2015.201-218>.
- North, D. C. *Institutions, Institutional Change, and Economic Performance*. Cambridge University Press, 1990.
- Prasetya, D. "The Effectiveness of KPK Oversight Regarding Public Officials' Conflicts of Interest." *Jurnal Integritas* 8, no. 1 (2022): 61–84. <https://doi.org/10.32697/integritas.v8i1.856>.
- Republic of Indonesia. "LAW OF THE REPUBLIC OF INDONESIA NUMBER 39 OF 2008 CONCERNING STATE MINISTRIES" 76, no. 3 (2008): 61–64.
- Republic of Indonesia. Law No. 20 of 2001 Amending Law No. 31 of 1999 on the Eradication of Corruption (2001). <https://peraturan.bpk.go.id/Details/45370>.
- Republic of Indonesia. Law No. 30 of 2014 on Government Administration (2014). <https://peraturan.bpk.go.id/Details/38771/uu-no-30-tahun-2014>.
- Republic of Indonesia. Law No. 39 of 2008 on State Ministries (2008). <https://peraturan.bpk.go.id/Details/39718/uu-no-39-tahun-2008>.

- RI, Constitutional Court. “Decision No. 79/PUU-IX/2011,” 2011. https://www.mkri.id/public/content/persidangan/putusan/putusan_79_PUU_IX_2011.pdf.
- Sedarmayanti. *Good Governance: Good Governance & Good Corporate Governance: Good Corporate Governance*. Revised edition. Mandar Maju, 2012.
- Seno Adji, I. *Corruption and Criminal Law*. Law Office & Legal Consultants Prof. Oemar Seno Adji & Partners, 2009.
- Susanto, M.I. “Legal Liability of Public Officials for Abuse of Authority from the Perspective of Administrative Law.” *Journal of Law and Judiciary* 8, no. 1 (2019): 87–108. <https://doi.org/10.25216/jhp.8.1.2019.87-108>
- Tjandra, W. R. *Public Finance Law*. Grasindo, 2014.
- United Nations Development Programme. “Governance for Sustainable Human Development: A UNDP Policy Document,” 1997. <https://www.undp.org/publications/governance-sustainable-human-development>.
- Weber, M. *Economy and Society: An Outline of Interpretive Sociology*. Edited by G Roth and C Wittich. University of California Press, 1978.
- Widjajanta, B, and A Widyaningsih. “Conflicts of Interest and Corruption in Government” *Jurnal Anti Korupsi* 10, no. 1 (2020): 33–52. <https://doi.org/10.32697/integritas.v6i2.567>.