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Reviewing The Legal Status of the Joint Ministerial Decrees in Indonesian State Administrative Law

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Abstract: *The implementation of state governance based on the concept of a material rule of law requires discretion as an adaptive mechanism to prevent stagnation and legal vacuum. This is manifested in practice in the form of the government's authority (freies ermessen) in making decisions. As is practiced in Indonesia, for example, several government officials or ministers under certain legal circumstances issue a single decision simultaneously called a "joint decision of government officials." The problem that must be highlighted lies in the nature of the product of "decisions," which tend to regulate, and sometimes even limit human rights. In theory, these characteristics should be identical to legal products of legislation (regeling). The actual meaning of "decisions" and the legal status of joint ministerial decrees in state administrative law will be the issues addressed in this article. This research is a normative legal research, using both a statutory and conceptual approach. The research results reveal that, in Indonesian state administrative law, a joint ministerial decree is included in the category of other types of legislation if it is based on the Law on the Formation of Legislation, so that even though the nomenclature used is "decision", if the material contains elements of restrictions and regulations, then it is categorized as a regulation. It may seem anomalous, but the legal basis is clear, that after the presence of Law Number 12 of 2011, the use of the nomenclature "decision" for a regulatory provision is no longer justified.*

Keywords: *Administrative law; Decision; Policy regulation.*

A. Introduction

Indonesia, as one of the nations established in the twentieth century, is inherently committed to embracing the concept of a *rule of law* that aligns with the principles of constitutionalism. This commitment is reflected in the consensus reached by the Indonesian people since the enactment of the 1945 Constitution as the nation's supreme law. The consensus has evolved into a collective ideal known as the state philosophy, serving as both the philosophical foundation and a unifying principle among all citizens within the context of statehood.[1]

In practice, Indonesia's concept of the rule of law predominantly reflects the continental legal model. This is evident from the legal practices that consistently adhere to written administrative principles. Hence, it is unsurprising that many scholars agree the emergence of *droit administratif* - as a distinct branch of law - originated from the continental system.

[1] Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat," *Fiat Justisia: Jurnal Ilmu Hukum* 5, no. 2 (2011): 141-152, https://doi.org/10.25041/fiatjustisia.v5no2.56., 142.

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The essence of *droit administratif*, or what is known as administrative law, lies in governing the relationship between the state administration and its citizens. Over time, this branch of law has developed to include mechanisms that limit administrative authority through administrative courts.[2]

The effort to limit administrative power stems from a single objective: to prevent the state from acting arbitrarily. Such efforts represent a hallmark of democratic governance.[3] This form of rule of law is often referred to as a democratic rule of law or constitutional democracy, in which government power is limited and all forms of arbitrariness against citizens are prohibited.[4] In this regard, Jimly Asshiddiqie introduced the concept of a democratic rule of law under the term *democratische rechtsstaat*, which requires that the rule of law be implemented in conjunction with democratic procedures. Accordingly, law and democracy are likened to two sides of the same coin—on one side, the rule of law must be democratic, while on the other, democracy must be grounded in law.[5] According to Ridwan, a state is referred to as a democratic rule of law because it accommodates both legal and democratic principles in the administration of government.[6]

As a consequence of adopting this democratic rule of law in governance, every government action or intervention in citizens' lives must be grounded in the principle of legality.[7] This principle emphasizes that government actions must be carried out in accordance with existing laws or within the authority granted by statutes. Every government act must have a clear and firm legal basis, as such actions have the potential to affect the rights, obligations, and freedoms of individuals.[8] However, as the understanding of the material rule of law developed - historically depicting governments facing challenges in fulfilling their responsibilities to promote public welfare - the interpretation of law-based governance began to expand. Consequently, in urgent situations, the government may deviate from statutory provisions in the public interest through the use of discretion**.**

This condition, however, raises new concerns regarding potential conflicts of interest between the government and citizens. In practice, discretion often results in harm to individuals due to improper or unlawful government actions, such as acts against the law (*onrechtmatige overheidsdaad*), abuse of power (*détournement de pouvoir*), or arbitrary actions (*willekeur*).[9] Therefore, clear regulations on the exercise of discretion are required, along with a functional administrative judiciary as a mechanism for resolving disputes when government actions infringe upon citizens' rights. The concept of a material rule of law,

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[2] Ridwan, *Hukum Administrasi Negara*, Rev (Rajawali Pers, 2016)., 4.
[3] Suwiryo Prawira, "Menakar Karakteristik Produk Hukum Hasil Perubahan Ketiga Undang-Undang Mahkamah Konstitusi," *Khairun Law Journal* 7, no. 2 (2024): 94-109, https://doi.org/10.33387/klj.v7i2.7582.
[4] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., 6.
[5] Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi: Serpihan Pemikiran Hukum, Media dan HAM*, 2nd ed. (Konstitusi Press, 2005)., 242.
[6] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., 8-11.
[7] Syurpana Nofanda, "Kewenangan Pemerintah Melakukan Pemutusan Akses Sistem Elektronik Dalam Perspektif Undang-Undang Informasi Dan Transaksi Elektronik," *JUSTITIABLE - Jurnal Hukum* 7, no. 2 (2025): 24-45, https://doi.org/10.56071/justitiable.v7i2.1176.
[8] Arikatul Firdaus et al., "Positivisme Hukum dalam Prosedur Legislasi Di Indonesia," *Jurnal Multidisiplin Ilmu Akademik* 2, no. 1 (2025): 192-201, https://doi.org/10.61722/jmia.v2i1.3190.; see also in Yashinta Irenne Marianna et al., "Peran Strategis Pengacara Negara Dalam Penanganan Kasus Korupsi Berdasarkan Undang-Undang Nomor 31 Tahun 1999 Dalam Kerangka Negara Hukum," *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 1 (2025): 66–80, https://doi.org/10.62383/humif.v2i1.996.
[9] Eny Kusdarini, *Asas-Asas Umum Pemerintahan yang Baik dalam Hukum Administrasi Negara* (UNY Press, 2019)., 2-3.

which grants the government a degree of flexibility, also implies the necessity of control and restraint over governmental actions to ensure administrative order. Hence, the presence of administrative law becomes crucial as a mechanism for regulating and supervising governmental authority. According to Peter Leyland and Gordon Anthony, the primary function of administrative law is to control decision-making processes at all levels of government—central, delegated, and local—based on their respective authorities, whether derived from statute, prerogative powers, or other sources.[10]

One manifestation of administrative law in Indonesia can be seen in the government's authority to issue decisions or policies that may affect the legal framework of legislation. However, a recurring issue is that many circulars or decisions (*beschikking*) issued by government officials tend to have a regulatory nature (*regeling*).[11] A concrete example is the Joint Ministerial Decree, issued collectively by several ministers or ministerial-level officials. In certain circumstances, such decrees are used as a legal basis for addressing cross-sectoral issues, particularly in law enforcement contexts. The proliferation of Joint Ministerial Decrees has led to interpretative ambiguities, both formally and substantively. The key question is whether such decrees should be classified as *beschikking* (individual decisions) or *regeling* (general regulations), given the fundamental theoretical differences between the two. Moreover, Indonesian legislation does not explicitly define the legal status of ministerial joint decrees within its normative hierarchy.

This ambiguity creates serious problems in implementation. The dual interpretation of joint decrees issued by ministries makes it difficult to distinguish between ministerial regulations and ministerial decisions. This situation opens the door to potential governmental arbitrariness in policy formulation. The danger becomes greater when restrictions on citizens' rights - normally protected by higher laws - are introduced through joint ministerial decrees, generating prolonged controversy. Notable examples include the Joint Decree of 11 Ministers on the Handling of Radicalism among Civil Servants,[12] and the Joint Decree of 3 Ministers on School Uniform Regulations, which sparked significant public debate upon issuance.[13]

Given these circumstances, it becomes relevant to examine comprehensively the legal standing of Joint Ministerial Decrees within Indonesia's administrative law framework. Previous studies on Joint Ministerial Decrees include Ridwan's work titled *"Eksistensi dan Keabsahan Surat Keputusan Bersama 3 Menteri Tentang Penjatuhan Sanksi Terhadap Pegawai Negeri Sipil."* That study examined the existence and legal validity of the decree imposing sanctions on civil servants involved in criminal offenses related to their positions. Ridwan concluded that such decrees function as guidelines for personnel authorities in imposing disciplinary sanctions and do not contradict statutory provisions or the general

[10] Peter Leyland and Gordon Anthony, *Textbook on Administrative Law*, 7th ed (Oxford University Press, 2013)., 1.
[11] Osihanna Meita Kasih et al., "Implementasi Hak Uji Materiil Terhadap Surat Edaran Dalam Konteks Hukum Tata Negara (Analisis Kasus Di Mahkamah Agung Indonesia)," *Causa: Jurnal Hukum Dan Kewarganegaraan* 4, no. 6 (2024): 6, https://doi.org/10.3783/causa.v4i6.3662., 26.
[12] Kompas Cyber Media, "Amnesty International: SKB 11 Menteri Mengingatkan pada Era Represif Orde Baru," KOMPAS.com, November 28, 2019, https://nasional.kompas.com/read/2019/11/28/12221281/amnesty-international-skb-11-menteri-mengingatkan-pada-era-represif-orde.
[13] Detik com, "Kontroversi Wali Kota Pariaman Sebab Tolak SKB 3 Menteri," News.Detik.Com, February 17, 2021, https://news.detik.com/berita/d-5376724/kontroversi-wali-kota-pariaman-sebab-tolak-skb-3-menteri.

principles of good governance. Furthermore, the decree's validity aligns with legal principles as long as it is not applied retroactively.[14]

This study differs significantly in scope. It focuses on the Joint Decree of Eleven Ministers on Handling Radicalism to Strengthen National Awareness among Civil Servants as its primary object of analysis. Moreover, this research first explores the theoretical meaning of *beschikking* (decision) and subsequently examines the legal standing of Joint Ministerial Decrees within Indonesia's administrative law. Accordingly, the study addresses two main issues: (1) What are the theoretical differences between *beschikking* (decision) and *regeling* (regulation)? And (2) What is the legal standing of Joint Ministerial Decrees within Indonesian administrative law? Through this inquiry, the study aims to contribute to a deeper understanding of the concepts of regulation and joint ministerial decree in Indonesia's administrative law.

B. Methodology

This research is a normative legal research using a statutory approach and a conceptual approach to identify legal principles and legal doctrines in answering a legal problem. The sources of library materials used consist of: 1) Primary legal materials, which include basic norms and statutory regulations (including: the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation, along with its amendments, Law Number 30 of 2014 concerning Government Administration, and Joint Decree of the Minister of Administrative and Bureaucratic Reform, Minister of Home Affairs, Minister of Law and Human Rights, Minister of Religion, Minister of Education and Culture, Minister of Communication and Information, Head of the State Intelligence Agency, Head of the National Counterterrorism Agency, Head of the State Civil Service Agency, Head of the Pancasila Ideology Development Agency, and Chair of the State Civil Service Commission concerning Handling Radicalism in the Framework of Strengthening National Insight in State Civil Apparatus in 2019); and 2) Secondary legal materials, including literature such as books, journal articles, and related research findings that provide further explanation of primary legal materials. Data collection was conducted through a literature review of relevant literature and laws and regulations. Data analysis techniques were conducted using descriptive qualitative techniques to outline and answer the established problem formulation.

C. Results and Discussion

Theoretical Distinction Between Administrative Decisions (*Beschikking*) and Regulations (*Regeling*)

To understand the distinction between decisions and regulations in administrative law, it is essential to conduct a comprehensive examination of their definitions, elements, validity requirements, and forms. This discussion is elaborated as follows.

1. Definition

The concept of an administrative decision, or *beschikking*, originated from the term *Verwaltungsakt*, first popularized by the German scholar Otto Mayer. In the Dutch legal

[14] Ridwan, "Eksistensi Dan Keabsahan Surat Keputusan Bersama 3 Menteri Tentang Penjatuhan Sanksi Terhadap Pegawai Negeri Sipil," *Jurnal Hukum IUS QUIA IUSTUM* 28, no. 1 (2021): 1-20, https://doi.org/10.20885/iustum.vol28.iss1.art1.

tradition, Van Vollenhoven and C.W. van der Pot introduced the term *beschikking,*[15] which was later adopted into Indonesian administrative law through W.F. Prins. Kuntjoro translated *beschikking* as "decision," whereas Utrecht interpreted it as "determination" (*ketetapan*), emphasizing that it should not be confused with the "*Ketetapan Majelis Permusyawaratan Rakyat (MPR)"*, which is a political instrument of higher order.[16]

In this study, the term *beschikking* is confined to its juridical meaning within administrative law. It is widely regarded as the central concept of administrative action, as emphasized by F.A.M. Stroink and J.G. Steenbeek, who considered decisions the "core notion" of administrative law. H.D. van Wijk defined a *beschikking* as a government act concerning an individual and concrete matter, not intended for the general public.[17]

Similarly, Van der Wel viewed a decision as a legal act performed by a governmental body to create or terminate a specific legal relationship,[18] while Van der Pot described it as a unilateral expression of will by a public authority (*bestuursorgaan*) that alters an existing legal relationship.[19]

Sjachran Basah, in *"Eksistensi dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia"*, explained that a *beschikking* is a written administrative act that produces legal consequences within the sphere of governance. W.F. Prins similarly described it as a unilateral legal act performed by a public authority in exercising a legally conferred competence.[20] Expanding upon this, Victor Situmorang outlined several defining aspects of *beschikking*, including:[21]

a. A determination constitutes a legal act regulated by or based on law, producing legal consequences such as the creation or termination of legal relationships, rights, and obligations. It therefore operates as a binding legal manifestation of state authority within the framework of administrative law;

b. A determination is a unilateral legal act, representing a one-sided expression of will by the government that is not influenced by any external party, yet gives rise to specific legal consequences. This unilateral nature underscores the state's sovereign authority in exercising administrative functions;

c. A determination falls within the domain of the executive branch (*bestuur*) in the narrow sense, meaning it constitutes an act performed solely by executive organs of government, distinct from the functions of the judiciary;

d. In a broader sense, determinations may also be made by legislative, executive, or judicial bodies, reflecting the interconnected nature of governance. While determinations are primarily an executive function, other state organs may also issue determinations within their respective competencies. For example, the legislature issues determinations related to the State Budget (APBN) as part of its fiscal authority, while the judiciary may issue determinations such as appointing a legal guardian for a minor through a district court ruling;

[15] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., 139-140.
[16] Yusri Munaf, *Hukum Administrasi Negara* (Marpoyan Tujuh, 2016)., p 78.
[17] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., 141.
[18] Victor M. Situmorang, *Dasar-Dasar Hukum Administrasi Negara* (Bina Aksara, 1989)., p 110.
[19] Jum Anggriani, *Hukum Administrasi Negara* (Graha Ilmu, 2012)., 114.
[20] Sjachran Basah, *Eksistensi dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia* (Alumni, 1985)., p 230.
[21] Situmorang, *Dasar-Dasar Hukum Administrasi Negara*., *Op.Cit*., 110-112.

e. Governmental acts that take the form of determinations are based on special authority inherent to public officials, which derives from coercive powers granted by public law. This characteristic affirms that determinations are not private legal acts but expressions of public authority;

f. The issuance of determinations is carried out by an organ of authority (*overheidsorgaan*), that is, a body vested with public power. Consequently, a determination may also be issued by a body outside the administrative hierarchy—for instance, by a judge who appoints a guardian (*curatorstelling*) for a minor—so long as such authority is grounded in public law.

Ridwan, in his book "*Tiga Dimensi Admninistrasi dan Peradilan Administrasi"*, explains that a decision (*beschikking*) represents a unilateral declaration of intent by a governmental organ, exercised under public law authority and directed toward a specific and individual case, with the purpose of producing legal consequences. The essential feature of such a decision lies in its capacity to generate legal effects, including the creation of rights and obligations for an individual, group, or object. From the perspective of its scope, decisions may be categorized into two orientations. First, internally directed decisions (*naar binnen gericht*), which apply within the administrative structure of government itself; and second, externally directed decisions (*naar buiten gericht*), which are addressed to external parties such as citizens or private legal entities.[22]

Normatively, the definition of a decision is codified in Article 1(3) of Law No. 5 of 1986 on the State Administrative Court, as amended by Law No. 9 of 2004. The provision stipulates that a decision constitutes a written, unilateral declaration of intent issued by a central governmental organ pursuant to obligations or powers derived from constitutional or administrative law, intended to determine, abolish, or terminate an existing legal relationship, or to create a new one. Such a decision may include a rejection that results in a determination, modification, annulment, or creation of legal relations.

2. Elements of a Decision (*Beschikking*)

In Indonesian Administrative Law, a *beschikking* (administrative decision) possesses distinctive elements that differentiate it from other forms of legal acts or administrative measures performed by government officials. Ridwan identifies several defining characteristics of an administrative decision, namely:[23]

a. it must constitute a written declaration of intent;
b. it must be issued pursuant to obligations or powers derived from constitutional or administrative law;
c. it must be unilateral in nature;
d. it must be concrete, thereby excluding decisions of a general or abstract character;
e. it must be intended to determine, terminate, or modify existing legal relationships, or to create new legal relations, which may include a rejection resulting in a determination, alteration, annulment, or creation of rights and obligations; and
f. it must originate from a governmental organ (Ridwan, 2016:144–145).

[22] Ridwan, *Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi* (FH UII Press, 2009)., 71-72.
[23] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., 144-145.

From a juridical standpoint, the elements of a *beschikking* are also codified in Article 87 of Law No. 30 of 2014 on Government Administration, which sets out that:

(1) a decision is a written determination, encompassing both formal and factual acts;
(2) it must be issued by a governmental body and/or official within the executive, legislative, judicial, or other state administrative institutions;
(3) it must be based on statutory provisions and the General Principles of Good Governance;
(4) it must be final in a broad sense, meaning it produces definitive legal consequences;
(5) it must have the potential to create legal effects; and
(6) it must be applicable to members of the public.

Collectively, these elements underscore that a *beschikking* serves as a manifestation of governmental authority in action, functioning as a concrete and binding instrument through which administrative organs exercise public power within the legal framework of the state.

3. Validity Requirements of Decisions

According to S.F. Marbun, a *beschikking* (administrative decision) is deemed legally valid only if it fulfills several essential indicators:

a. the decision must be issued by an organ or official possessing lawful authority (*bevoegd*);
b. the decision must adhere to the prescribed legal form and follow the proper procedural requirements (*rechtmatige*);
c. the decision must be free from juridical defects; and
d. the substantive content of the decision must align with the purpose and intent of the underlying legal provisions (*doelmatig*).[24]

Similarly, Van der Pot identifies four conditions that must be satisfied to ensure the legitimacy and legal certainty of an administrative decision:

a. the decision must be issued by a competent governmental authority or administrative organ;
b. the decision-maker must avoid any juridical deficiencies that could compromise the legality of the act;
c. the form and structure of the decision must be explicitly prescribed by statutory regulation, serving as the formal foundation for its issuance; and
d. the substantive content of the decision must not contradict the Constitution.[25]

Conversely, a decision is considered invalid (*niet rechtgeldig beschikking*) under the following circumstances:

a. it is null and void by operation of law (*van rechtswege nietig*);
b. it is absolutely null and void, meaning that any person adversely affected may challenge it (*absolute nietig*);

[24] S.F. Marbun, *Hukum Administrasi Negara I (Administrative Law I)*, Rev. (FH UII Press, 2018)., 297-300.
[25] Nurul Hidayah, "Keputusan Tata Usaha Negara (*Beschikking*)," *Siyasah : Jurnal Hukum Tata Negara* 6, no. II (2023)., 65.

c. it is relatively void, where revocation may be sought only by specific parties with standing (*relatief nietig*); and

d. it is voidable, meaning that it may be annulled through appropriate legal mechanisms (*vernietigbaar*).[26]

Collectively, these criteria demonstrate that the validity of administrative decisions is not only determined by the formal and procedural competence of the issuing authority but also by the substantive conformity of the decision with higher legal norms and the Constitution.

4. Types of Decisions

Utrecht classifies administrative determinations (*beschikkingen*) into three principal categories: (1) positive and negative determinations; (2) declaratory and constitutive determinations; and (3) summary determinations. Regarding the first category: (a) a positive determination is one that gives rise to new rights and/or obligations for the individual subject to the decision, whereas (b) a negative determination produces no alteration to an existing legal status. Negative decisions may take the form of a declaration of incompetence (*onbevoegdverklaring*), a declaration of inadmissibility (*niet-ontvankelijkverklaring*), or an explicit rejection (*afwijzing*). For the second category: (a) a declaratory determination (*rechtsvaststellende beschikking*) merely affirms the existing legal situation - stating what the law already is - while (b) a constitutive determination (*rechtscheppende beschikking*) actively establishes new legal relations or creates legal consequences. As for the third category, Prins identifies four types of summary determinations, namely: (a) a determination that revises or amends the wording of a previous decision; (b) a negative determination; (c) the revocation or annulment of an earlier determination; and (d) a declaration of enforceability (*uitvoerbaarverklaring*).[27]

Meanwhile, Prajudi Atmosudirdjo distinguishes between two primary forms of determinations: negative (rejection) and positive (approval) decisions. A negative determination operates only once, effectively denying a request or application. By contrast, positive determinations are divided into five categories:

a. those that create new legal circumstances of general application;
b. those that create new legal circumstances for a specific object or entity;
c. those that establish or dissolve a legal entity;
d. those that impose obligations or burdens; and
e. those that confer benefits or advantages.

Positive determinations that confer benefits can be further classified into several sub-categories:

a. dispensation, meaning an administrative declaration by a competent authority that exempts a particular case from the application of a statutory provision;
b. permit (*vergunning*), which constitutes a dispensation from a prohibition;
c. license, referring to a commercially oriented authorization that generates profit; and
d. concession, a form of determination that enables the concessionaire to obtain a dispensation, permit, or license, as well as a degree of delegated governmental authority—for instance, to relocate settlements or construct public infrastructure such

[26] S.F. Marbun, *Hukum Administrasi Negara I (Administrative Law I)*., *Op.Cit*., p 302.
[27] Sahya Anggara, *Hukum Administrasi Negara* (Pustaka Setia, 2018)., p 200.

as roads. Consequently, the granting of concessions must be undertaken with utmost prudence, discretion, and thorough consideration.[28]

Taken together, these classifications illustrate the diversity and complexity of administrative determinations within Indonesian administrative law, emphasizing the nuanced relationship between governmental discretion and the creation of legal effects in individual and public contexts.

5. Distinction Between Decisions (*Beschikking*) and Regulations (*Regeling*)

Conceptually, regulations and administrative decisions possess markedly distinct characteristics. In terms of their nature, regulations are abstract (*in abstracto*) and general in scope, thereby carrying a general binding effect applicable to all. Functionally, regulations serve as instruments for governing matters of a general and normative nature. In contrast, administrative decisions are individual and concrete in character. A decision represents a formal declaration issued by a competent governmental authority, producing specific legal effects for identified subjects or cases. The process of forming a decision is therefore fundamentally different from that of formulating a regulation.[29] To provide a clearer understanding of the substantive distinctions between administrative decisions and regulations, the author presents the comparison in the following table:

Table 1. Distinction Between Administrative Decisions and Regulations.

Basis of Distinction	**Decision (*Beschikking*)**	**Regulation (*Regeling*)**
Object of application	Individual	General
Legal scope	Concrete	Abstract
Duration	Limited and specific	Continuous until repealed or amended
Legal foundation	Based on statutory authority	Derived from higher legal norms (Constitution or superior legislation)

From the table above, the distinctions may be explained as follows. First, within the concept of a regulation (*regeling*), the regulatory function constitutes the essence of statutory instruments, consistent with the idea of a general rule-making function (*regelindaad*). This function exists because statutory regulations inherently contain norms of general application. Moreover, statutory regulations serve both internal and external functions. The internal function relates to their role in law creation, legal reform, integration, and the assurance of legal certainty, whereas the external function involves their contribution to social change, stability, and facilitation of governance.[30]

[28] *Ibid*., p 200-201.
[29] Lisa Ira, "Urgensi Pengunaan Landasan Filosofis, Sosiologis, dan Yuridis dalam Keputusan Kepala Daerah," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 4, no. 2 (2024): 480-490, https://doi.org/10.46306/rj.v4i2.155., 482.
[30] Fakhry Amin et al., *Ilmu Perundang-Undangan* (Sada Kurnia Pustaka, 2023)., 90-91.

Meanwhile, the term "beschikking" is often understood as a decision that serves as the legal basis for unilateral governmental action in the exercise of administrative authority. Within the context of constitutional and administrative governance, a *beschikking* frequently implies the delegation of authority, governed by the principle of *delegatus non potest delegare* - that a delegated authority cannot be further delegated. A government official entrusted with a delegated power must exercise such authority personally and responsibly. The nature of a *beschikking* is individual and concrete, and its validity is determined internally within the administrative sphere in which it is issued. Accordingly, if any party within that administrative environment considers the decision improper, they may challenge it before the State Administrative Court, thereby making it an object of administrative dispute.[31]

Second, a regulation (*regeling*) possesses an abstract (*in abstracto*) or general normative character (*generale norm*), binding upon the public at large and serving to regulate matters of a general nature.[32] Because of its general binding effect, a regulation is designed to address issues that share common characteristics and may arise in the future.[33] As noted by Maria Farida, the distinction between regulations and decisions can be drawn from their respective legal characteristics. In simple terms, regulations are general, abstract, and continuously applicable until amended or revoked, whereas decisions are individual, concrete, and final.[34] The individual nature of a *beschikking* means that it is not addressed to the public at large, but only to specific individuals or entities as the direct subjects of the decision. Its concrete nature indicates that it applies to specific objects, often limited by time, place, or circumstance.[35]

In relation to this, Ridwan further asserts that, in terms of target and normative character, statutory regulations are general in orientation (*algemene strekking*) and possess abstract norms, while administrative decisions are individual in focus and contain concrete norms. Statutory regulations thus serve as the foundation for the issuance of administrative decisions. Without the existence of such regulations, a decision cannot be lawfully issued, as one of the fundamental and indispensable elements of a decision is its legal basis in statutory law. Consequently, within the hierarchy of public legal norms, an administrative decision is often regarded as the final or operational norm, representing the culmination of the normative framework.[36]

The Legal Standing of Joint Ministerial Decrees in Indonesian Administrative Law

To examine the legal status of Joint Ministerial Decrees (Surat Keputusan Bersama or SKB), this discussion begins by analyzing their normative position within the framework of Law of the Republic of Indonesia No. 12 of 2011 on the Formation of Laws and Regulations, as amended by Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 (hereinafter referred to as the *Law on the Formation of Laws and Regulations*).

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[31] Sholahuddin Al-Fatih and Mujibur Rahman Khairul Muluk, "Understanding Beschikking, Regeling and Beleidsregel in Indonesian Legal System," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (2023): 87-95, https://doi.org/10.22219/aclj.v4i2.25417., 89.
[32] Marbun SF. and Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara* (Liberty, 2000)., p 94.
[33] E. Utrecht, *Pengantar Hukum Administrasi Negara Indonesia* (Ichtiar Baru, 1990)., p 42.
[34] Maria Farida Indrati, *Ilmu Perundang-Undangan I : Jenis, Fungsi Dan Materi Muatan* (Kanisius, 2018)., p 78.
[35] Ridwan, *Hukum Administrasi Negara*., *Op.Cit*., p 153.
[36] Ridwan, *Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi*., *Op.Cit.,* p 71-72.

Article 7(1) of the Law on the Formation of Laws and Regulations establishes the types and hierarchy of legislation in Indonesia, which consist of:

(1) the 1945 Constitution of the Republic of Indonesia, as the supreme law of the land;

(2) Decrees of the People's Consultative Assembly (MPR);

(3) Laws and/or Government Regulations in Lieu of Laws;

(4) Government Regulations;

(5) Presidential Regulations;

(6) Provincial Regulations; and

(7) Regency/Municipal Regulations.

Although Article 7(1) lists only seven categories of legislation, the law does not limit the forms of regulation exclusively to those enumerated. Additional forms of legislative instruments are recognized under Article 8(1), which provides that: "Other types of legislation besides those referred to in Article 7(1) include regulations issued by the MPR, DPR, DPD, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, and other bodies, agencies, or commissions of equivalent status established by law or under the authority of law, as well as regional legislative bodies and executives at the provincial, regency, municipal, and village levels."

Although the Joint Ministerial Decree (SKB) is not explicitly mentioned in either Article 7(1) or Article 8(1), Article 8(2) provides clarification, stating that: "Legislation as referred to in paragraph (1) shall be recognized and have binding legal force insofar as it is ordered by a higher law or established pursuant to lawful authority." This provision implies that Joint Ministerial Decrees qualify as a type of regulation issued under lawful ministerial authority, typically formed jointly by two or more ministries to govern matters that intersect within their respective administrative domains and functional mandates.

From a terminological perspective, the use of the term "Decision" in "Joint Ministerial Decree" would, at first glance, suggest its classification as a decision (*beschikking*), or what statutory law refers to as an administrative decision. According to Law No. 30 of 2014 on Government Administration, an administrative decision is defined as a written determination issued by a governmental body and/or official in the execution of governmental functions.

However, when examined normatively within the context of the Law on the Formation of Laws and Regulations, and specifically Article 8(1), the phrase "regulations issued by ministers" indicates that ministerial products possessing general binding force are to be regarded as legislative instruments, provided they are issued under the authority of higher law or within the scope of delegated competence. The terminology used in Article 8(1) - *"regulation"* - differs from the term *"decision"*, which forms the subject of this study.

Regarding this terminological issue, Hamid Attamimi, in his doctoral dissertation, explains that in the field of constitutional law, the term *"decision" (besluit)* is neutral, as it may contain normative provisions (*regeling*) or individual determinations (*beschikking*). Since the enactment of Law No. 10 of 2004 on the Formation of Laws and Regulations, there has been no longer any legislative product bearing the nomenclature "decision" that carries regulatory content. Any such "decision" of a general and regulatory nature must be referred to as a "regulation".

This principle is reaffirmed in Article 56 of Law No. 10 of 2004, which stipulates that: "All Presidential, Ministerial, Gubernatorial, and Regency/Municipal Decisions of a regulatory nature enacted prior to this law shall be construed as 'regulations,' insofar as they are not inconsistent with this law".[37] Subsequently, under the Law No. 10 of 2004 regime, the term *"decision"* has been confined to refer exclusively to individual, concrete, and one-time determinations (*einmahlig*), such as appointments or dismissals from office, which do not contain general norms. When Law No. 12 of 2011 replaced the 2004 statute, Article 100 reaffirmed the same interpretative guidance: "All Presidential, Ministerial, Gubernatorial, Regency/Municipal, or other administrative decisions of a regulatory nature issued prior to this law shall be construed as regulations, insofar as they do not conflict with this law." This provision implies that the use of the nomenclature "decision" for instruments of a regulatory nature is no longer appropriate under the current legal framework. Consequently, the correct nomenclature for normative legal instruments should be "regulation", while *"decision"* should refer only to individual, concrete, and one-time administrative acts (*beschikking*). The term *einmahlig* refers to a legal norm that applies once and is thereafter concluded.

Nevertheless, from the perspective of substantive content, many Joint Ministerial Decrees issued after the enactment of the reformed Law on the Formation of Laws and Regulations exhibit characteristics more akin to "regulations (regeling)" rather than "decisions (beschikking)" in the strict sense of administrative law. A pertinent example is the Joint Ministerial Decree of Eleven Ministers on the Handling of Radicalism in the Context of Strengthening National Insight among Civil Servants (2019). The nomenclature of that decree is as follows: "Joint Decree of the Minister for Administrative and Bureaucratic Reform, the Minister of Home Affairs, the Minister of Law and Human Rights, the Minister of Religious Affairs, the Minister of Education and Culture, the Minister of Communication and Informatics, the Head of the State Intelligence Agency, the Head of the National Counter-Terrorism Agency, the Head of the National Civil Service Agency, the Head of the Agency for the Development of Pancasila Ideology, and the Chairperson of the Civil Service Commission on the Handling of Radicalism in the Context of Strengthening National Insight among Civil Servants (2019)."

The Joint Ministerial Decree in question established a new legal relationship by creating an inter-ministerial and inter-agency task force to address issues of radicalism within the Indonesian civil service. Substantively, such a provision appears justifiable, as it fulfills the theoretical and statutory elements of a decision (*beschikking*) as regulated under the Law on Government Administration.

However, the core issue lies in the fact that this Joint Decree contains provisions that restrict fundamental human rights. This is evident in Clause Five of the decree, which enumerates several prohibited activities, particularly under points (1), (4), (7), and (8). These prohibitions include restrictions on freedom of expression, such as oral and written statements disseminated through various social media platforms, employing parameters that are vague, abstract, and open to multiple interpretations. Furthermore, the decree prohibits online expressions in the form of reactions such as *likes, dislikes, loves, retweets,* or *comments*, as well as bans on assembly and association, all of which are constitutionally protected rights. Despite this, such prohibitions were introduced through the Joint Decree of Eleven Ministers.

[37] Indrati, *Ilmu Perundang-Undangan I : Jenis, Fungsi Dan Materi Muatan*., *Op.Cit*., 212.

Restrictions involving human rights should be imposed only through legislation enacted by the parliament (DPR), following a participatory and democratic process. This is because any form of regulation that limits human rights falls within the domain of formal statutory lawmaking, rather than administrative decrees. Therefore, it is inappropriate to regulate such matters through a ministerial decree, which should instead be confined to concrete, individual, and situational determinations or instructions, not to universal or normative regulations.

If a Joint Ministerial Decree potentially conflicts with constitutionally guaranteed human rights, what legal remedies are available to the affected parties? Referring to Article 31(1) of Law No. 3 of 2009 on the Second Amendment to the Law on the Supreme Court, in conjunction with Article 20(2) of Law No. 48 of 2009 on Judicial Power, it is explicitly stipulated that the authority to review statutory instruments subordinate to legislation rests with the Supreme Court of the Republic of Indonesia.

In this context, the legal position of a Joint Ministerial Decree must be understood in accordance with Article 8(1) of Law No. 12 of 2011 on the Formation of Laws and Regulations, which classifies such decrees as “other forms of legislation” beyond those enumerated in Article 7(1) of the same law. Consequently, a Joint Ministerial Decree may be subject to judicial review before the Supreme Court if its substantive provisions conflict with higher laws or result in legal harm to affected parties.

Moreover, the substantive characteristics of the Joint Decree of Eleven Ministers clearly align more closely with the nature of a regulation (*regeling*)—given its general applicability, its imposition of restrictions and sanctions, and its continuing legal effect—rather than that of an individual administrative decision (*beschikking*). A notable precedent for such judicial review occurred in 2021, when the Supreme Court of the Republic of Indonesia rendered Decision No. 17P/HUM/2021, which examined the legality of a Joint Ministerial Decree.

D. Conclusion

Based on the discussion above, several conclusions can be drawn: *First,* the theoretical explanation confirms that decisions and regulations each have very different natures and characteristics. Substantially, regulations are legal products whose function is to regulate or limit, even encompassing the creation of law, legal reform, establishing boundaries, and maintaining stability. Therefore, they are general in nature because they contain generally applicable rules. Meanwhile, decisions are unilateral actions (free will) of the government in addressing or responding to a particular legal situation. Therefore, they are individual and concrete in nature, and their validity depends on the internal government environment in which the decision is made. *Second,* in the legislation in Indonesia, in this case the Law on the Formation of Legislation for example, the status of the joint decree of the ministers is included in the category of legislation based on Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011. Specifically, the Joint Decree of the ministers as stipulated in the discussion above, cannot be categorized as a decision (*beschikking*) as referred to in Law Number 30 of 2014 on Government Administration, even though the nomenclature used is "Decision". The main parameter is seen from the nature of the material content, whether it contains elements of determination or regulation and restrictions. If a joint decree of the ministers contains regulatory nature, then it must be categorized as a regulation. In addition, the results of the discussion also confirm that the use of the nomenclature "decision" for a provision that is regulatory in nature after the presence of Law Number 12 of 2011 is actually

no longer legally appropriate. The legal basis is clearly and explicitly regulated in Article 100 of the law.

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