

School of Law

**Reforming Indonesian Government Bureaucracy:
Political and Statutory Challenges in Reorganisation**

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**This thesis is presented for the degree of
Doctor of Philosophy
of
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Declaration

To the best of my knowledge and belief, this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

The research presented and reported in this thesis was conducted in accordance with the National Health and Medical Research Council Statement on Ethical Conduct in Human Research (2007) – updated March 2014. The proposed research study received human research ethics approval from the Curtin University Human Research Ethics Committee (EC00262), Approval Number #HRE2016-0474.

6 March 2020

Abstract

The purpose of this thesis is to identify challenges confronting the reform of the Indonesian public sector, particularly in the area of institutional reform, and to ascertain the extent to which political and legal aspects influence such reform. In addition, this study proposes a design for a legal framework for establishing effective and efficient government organisations. The large structure of the Indonesian public sector potentially allows for significant overlap in function between institutions, which results in ineffective and inefficient governance. Government institution reform in Indonesia is often faced with political and legal obstacles. Sometimes, in the past, politicians or top-level echelons in the public sector have resisted reform measures in the interests of preserving their positions in the administration. Moreover, there are laws that provide for the preservation of certain ministries or agencies; reforming these often involves difficult political processes.

Keywords: *bureaucracy; reform; legal; politics; administrative; reorganisation*

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Abbreviations

BAPETEN	<i>Badan Pengawas Tenaga Nuklir</i> (Nuclear Energy Regulatory Agency)
BASARNAS	<i>Badan SAR (Search and Rescue) Nasional</i> (National Search and Rescue Agency)
BATAN	<i>Badan Tenaga Nuklir Nasional</i> (Nuclear Energy Agency)
BIG	<i>Badan Informasi Geospasial</i> (Geospatial Information Agency)
BKKBN	<i>Badan Kependudukan dan Keluarga Berencana Nasional</i> (National Population and Family Planning Board)
BKN	<i>Badan Kepegawaian Negara</i> (National Civil Service Agency)
BKPM	<i>Badan Koordinasi Penanaman Modal</i> (Investment Coordinating Board)
BNN	<i>Badan Narkotika Nasional</i> (National Narcotic Agency)
BNPB	<i>Badan Nasional Penanggulangan Bencana</i> (National Agency for Disaster Management)
BPK	<i>Badan Pemeriksa Keuangan</i> (Audit Board of the Republic of Indonesia)
DPD	<i>Dewan Perwakilan Daerah</i> (House of the Regional Representatives)
DPR	<i>Dewan Perwakilan Rakyat</i> (House of Representatives)
DPRD	<i>Dewan Perwakilan Rakyat Daerah</i> (Regional House of Representatives)
EODB	Ease of Doing Business
Gerindra	<i>Partai Gerakan Indonesia Raya</i> (Great Indonesia Movement Party)
Golkar	<i>Golongan Karya</i> (Functional Group Party)
Hanura	<i>Partai Hati Nurani Rakyat</i> (Unity for Development Party)
K/L	<i>Kementerian/Lembagam</i> (Ministries/Agencies)
KemenPANRB	<i>Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi</i> (Ministry of Administrative and Bureaucratic Reform)
Keppres	<i>Keputusan Presiden</i> (Presidential Decree)
KOMPAK	<i>Kolaborasi Masyarakat dan Pelayanan untuk Kesejahteraan</i> (Public Collaboration and Services for Welfare)
KPK	<i>Komisi Pemberantasan Korupsi</i> (Commission for Eradication of Corruption)
LNS	<i>Lembaga Non-Struktural</i> (Non-structural Agencies)
LPNK	<i>Lembaga Pemerintah Non-Kementerian</i> (Non-ministerial Agencies)
MA	<i>Mahkamah Agung</i> (Supreme Court)
MK	<i>Mahkamah Konstitusi</i> (Constitutional Court)

MoABR	<i>Ministry of Administrative and Bureaucratic Reform</i> or <i>Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi</i>
MoF	Ministry of Finance
MPR	<i>Majelis Permusyawaratan Rakyat</i> (People’s Consultative Assembly)
Nasdem	<i>Partai Nasionalis Demokrat</i> (Nationalist Democrat Party)
NKRI	<i>Negara Kesatuan Republik Indonesia</i> (Unitary State of the Republic of Indonesia)
NPM	New Public Management
OECD	Organisation for Economic Co-operation and Development
PAN	<i>Partai Amanat Nasional</i> (National Mandate Party)
PDIP	<i>Partai Demokrasi Indonesia Perjuangan</i> (Indonesian Democratic Struggle Party)
Perpres	<i>Peraturan Presiden</i> (Presidential Regulation)
Perpu	<i>Peraturan Pemerintah Pengganti Undang-undang</i> (Government Regulation in Lieu of Law)
PKB	<i>Partai Kebangkitan Bangsa</i> (National Awakening Party)
PKS	<i>Partai Keadilan Sejahtera</i> (Welfare Justice Party)
POLRI	<i>Kepolisian Republik Indonesia</i> (Indonesian National Police)
PP	<i>Peraturan Pemerintah</i> (Government Regulation)
PPP	<i>Partai Persatuan Pembangunan</i> (Unity for Development Party)
RI	<i>Republik Indonesia</i> (Republic of Indonesia)
RIS	<i>Republik Indonesia Serikat</i> (United States of Indonesia)
RPJMN	<i>Rencana Pembangunan Jangka Panjang</i> (National Long-term Development Plan)
RPJP	<i>Rencana Pembangunan Jangka Menengah</i> (National Medium-term Development Plan)
RRI	Radio of the Republic of Indonesia
RUU	<i>Rancangan Undang-undang</i> (Bill)
TNI	<i>Tentara Nasional Indonesia</i> (National Armed Forces)
TVRI	Television of the Republic of Indonesia
USA	United States of America
UU	<i>Undang-undang</i> (Statutes/laws/legislation)

List of Publications

Some minor part of this thesis has been published in:

Journal:

Mas Pungky Hendra Wijaya, Prafula Pearce and Gabriël Moens, 'Reforming Bureaucracy in Indonesia: the Legal Challenges of Reorganisation' (2019) *International Trade and Business Law Review* Vol XXII, 229 – 246.

Conference and Paper Presentation:

Mas Pungky Hendra Wijaya, 'Political and Legal Challenges in Reforming the Structures of Indonesian Bureaucracy' (Paper presented at the 4th Global Conference on Business and Social Sciences, Dubai, 14 November 2016).

Mas Pungky Hendra Wijaya, 'Administrative Reform in Indonesia: Legal Challenges of Institutional Reform' (Paper presented in the 7th Annual Conference on Law, Regulations and Public Policy, Singapore, 25 June 2018) <doi: 10.5176/2251-3809_LRPP18.14>.

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Mas Pungky Hendra Wijaya

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Notation in the Interview Transcriptions

All interviews were conducted in *Bahasa Indonesia* and translated into English in the transcriptions. In editing, some words have been omitted or inserted; however, every effort has been made to retain the context and meaning of the original words and the language spoken in the interviews. Sounds uttered by the researcher, repetition, and hesitation have been omitted, unless they added meaning to the direct quotation.

The following notations are used in direct participant quotations

Each participant is identifiable as they have agreed in the consent form. All participants have been provided with the participant information sheet and signed the consent form. The researcher retained the signed consent form and provided the copy to the participant.

...	Represents a pause by the speaker. Two or more groups of dots denote a proportionally longer pause.
[...]	Represents a portion of text that has been edited to improve the meaning or remove immaterial text.

Chapter 1: Introduction

1.1 Overview and Problem Definition

The purpose of this thesis is to identify political and statutory challenges to bureaucracy reform, at the national level, in Indonesia. In the world of administrative governance, nothing has become more constant than change; most governments continuously receive pressure to reform, or to radically change and transform. The problems associated with bureaucracy are often structural. Therefore, reorganisation is a logical step. The blocks of organisations are rearranged to improve symmetry, logical grouping, coordination and efficiency. However, there are political and statutory impediments to conducting reorganisation. The large structure of the Indonesian Central Government means that there is significant duplication of function among ministries and agencies, in part because of entrenchment in legislation. This has led to ineffective government structures. There is also a significant overlap in function between existing institutions and newly created ones. The process required to amend legislation related to these institutions poses difficulties for reorganising them. This thesis takes a qualitative approach to examining such issues. Sociological and legal concepts are combined, merging political sciences, public policy and management concepts with legal research in the area of administrative law.

The bureaucracy represents problems of inefficiency, red tape, obstructionism, incompetence and corruption. However, bureaucracy plays a crucial role in modern societies. It is necessary but problematic. There are many definitions of bureaucracy. It can be examined from different perspectives—from political science, to sociology, management and economics. In its simplest meaning, bureaucracy is the running of a public institution by officials to achieve specific goals for the government. In the context of this thesis, Goodsel's definition of bureaucracy (or 'the bureau') has been adopted, in which he refers to bureaucracy as 'all ministries, departments, or subunits of the public sector which are charged with administrative responsibilities and operated at public expense'.¹

¹ Paul du Gay, *The Values of Bureaucracy* (Oxford University Press, 2005).

The resignation of President Soeharto, following civil unrest in 1998, marks the beginning of the ‘reformation era’ in Indonesia. Since then, Indonesia has conducted bureaucracy reform in various areas, including reorganising government bodies.² However, the organisation of its government is still regarded as inefficient. Even the new government under President Joko Widodo has recognised the need to establish a more efficient government—evidenced by the process they put in place to redesign organisation and governance across ministries and agencies in Indonesia.³ In 2014 to 2017, or during the first three years of the first term of Joko Widodo’s presidency, 23 executive bodies were restructured in pursuit of efficiency.⁴

Nevertheless, the bureaucracy in Indonesia is still bloated and expanded. Its government has 34 ministries, 29 non-ministerial/special agencies, and 103 auxiliary agencies.⁵ The reorganising of these executive bodies often faces political and legislative obstacles. Politicians reject reform to sustain their rent-seeking practices and patronage networks.⁶ Reform is constrained by political compromises and rejected by top-level officials.⁷ Caiden argues that the probable reason behind this is that public leaders’ support for administrative reform is often insincere, since they are careful to conduct reform which does not threaten their power, position and popularity.⁸ Moreover, there is a traditional inclination among civil servants in Indonesia to serve the government, or political elites, rather than the people.⁹ It is no surprise then that the relationship between political elites and the bureaucracy has a background of rent-seeking behaviours. Efforts to improve bureaucracy performance have the impediment

² Ministry of Administrative and Bureaucratic Reform, *Sosialisasi Undang-undang Administrasi Pemerintahan* [Socialisation of Administrative Procedure Laws] (12 May 2015) <<http://www.menpan.go.id/download/file/4956-sosialisasi-uu-ap-prof-dr-eko-prasojo>>.

³ President of the Republic of Indonesia, *Nawa Cita Joko Widodo and Jusuf Kalla* [9 Main Programs of Joko Widodo and Jusuf Kalla Presidency] (Online, 12 May 2015) <<http://www.menpan.go.id/news-ticker/3323-nawa-cita-2014-2019>>.

⁴ Ministry of Administrative and Bureaucratic Reform, ‘Menteri PANRB dan Ketua DPR RI Sepakat Wujudkan Reformasi Kelembagaan’ [Minister of Administrative and Bureaucratic Reform and Chairman of the House of Representative Agrees to Conduct Institutional Reform] (Web Page, 23 July 2019) <<https://www.menpan.go.id/site/berita-terkini/menteri-panrb-dan-ketua-dpr-ri-sepakat-wujudkan-reformasi-kelembagaan>>.

⁵ Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, ‘Kelembagaan Pemerintah Indonesia’ [Indonesian Government Bodies Register] (2019) <<https://www.menpan.go.id/site/kelembagaan>>.

⁶ Yuki Fukuoka, ‘Politics, Business and the State in Post-Soeharto Indonesia’ (2012) 34(1) *Contemporary Southeast Asia* 80.

⁷ Ibid.

⁸ Gerald E Caiden, *Administrative Reform Comes of Age* (Wolter de Gruyter, 1991), 3.

⁹ Osamu Koike, ‘Institutionalizing Performance Management in Asia: Looking East or West?’ (2013) 26(5) *The International Journal of Public Sector Management* 347.

of a patrimonial culture based on patron-client relations (in contrast to a merit-based rational-legal culture).¹⁰

Political transactions drive the creation of agencies and the appointment of top-level officials.¹¹ The democratisation process that started in 1998 has led to increased rent-seeking behaviours and changed the relationship between political elites and bureaucratic elites.¹² Fukuoka postulates that political elites are only willing to work with a government that shares power with them—Presidents have to form coalition governments by allocating some ministerial posts and the heads of executive bodies to political parties, for the sake of political stability.¹³ Parliament is willing to cooperate with the president regardless of his policy orientation, as long as he ‘remains attentive to the plurality of interests in the political arena’.¹⁴

Kasim argues that bureaucratic problems in Indonesia are ‘multi-dimensional and protracted as a vicious circle’.¹⁵ He posits that the reform effort is not adequate because the focus of the reform is the implementation of legal rules.¹⁶ Reform efforts reveal that the government is still eager to work based on the existing legislative framework, focusing on performing existing policy instead of changing their mindset and harmonising policy contents and legal rules.¹⁷ For Kasim, this is ironic, considering that the major problem of bureaucracy is caused by the disharmony of policies and legal rules.¹⁸ Kasim highlights this situation with examples of the disharmony between local government law and state finance law, as well as between nine laws and hundreds of legal rules regarding land uses and titles.¹⁹

Moreover, some ministries and agencies are statutorily established. Reorganising them requires amending the law relevant to their organisation. This would involve a long and difficult political process for achieving consensus and compromises between the

¹⁰ Ibid.

¹¹ Fukuoka (n 6) 93.

¹² Ibid 95.

¹³ Ibid 94.

¹⁴ Ibid.

¹⁵ Azhar Kasim, ‘Bureaucratic Reform and Dynamic Governance for Combating Corruption: The Challenge for Indonesia’ (2013) 20(1) *Bisnis & Birokrasi* 18.

¹⁶ Ibid 19.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

executive and legislative bodies.²⁰ However, the extent to which political and legislative features shape the public sector and organisational changes in Indonesia has not yet been thoroughly studied. It is essential to conduct a study that examines political and statutory issues of reform, particularly in the area of reorganisation. This research identifies political and statutory reorganisation problems and recommends possible solutions.

Any study related to restructuring government agencies in Indonesia must include an examination of the issues linked to the relationship between its bureaucracy and politics. The bureaucracy often becomes an object of political conflict between executive and legislative powers who clash in their attempts to control its influence.²¹ Hammond and Knott state that bureaucracy can be autonomous, controlled by Congress or courts, under the control of the president or under the joint control of these institutions.²² Although limited to the USA's political context, Hammond and Knott's study supports the assertion that politics are heavily involved in managing the bureaucracy. Indonesia is adopting the same presidential system as the USA and the parliament in Indonesia is moving towards having a stronger role and power, similar to that seen in the USA. However, since politic-topographical features vary between countries, challenges hindering their reform are different.²³ Hamond and Knott's findings align with those of Palombara, who argues that top-level bureaucracy is often deeply involved with politics—despite the view that civil servants are neutral, they are frequently engaged in political processes.²⁴ These findings indicate how the public sector works and how it is affected by political situations.

One of the fundamental principles of the rule of law is that power is divided into executive, legislative, and judicative powers.²⁵ Indonesia is a democratic country with

²⁰ See General Secretariat of the House of Representative of the Republic of Indonesia, *Handbook on the Legislative Process* (UNDP, 2015).

²¹ Thomas H Hammond and Jack H Knott, 'Who Controls the Bureaucracy?: Presidential Power, Congressional Dominance, Legal Constraints, and Bureaucratic Autonomy in a Model of Multi-Institutional Policy-Making' (1996) 12(1) *Journal of Law, Economics, & Organization* 119.

²² Ibid.

²³ Christopher Pollitt and Geert Bouckaert, *Public Management Reform: A Comparative Analysis: New Public Management, Governance, and the Neo-Weberian State* (Oxford University Press, 3rd ed, 2011) 47.

²⁴ Joseph La Palombara, 'An Overview of Bureaucracy and Political Development' in *Comparative Public Administration* (Emerald Group Publishing, 2006) vol 15, 193.

²⁵ Hammond and Knott (n 21).

separation of powers, where executive power lies with the government, legislative power with the parliament, and judicial power with the court system.²⁶ Indonesia's government follows the presidential system. According to Article 4 of the Constitution, the President holds executive power, acting as the head of state and the head of administration; he has authority in the creation of ministries and government agencies, as well as in the appointment of ministers and heads of agencies.²⁷ However, in the context of power separation and democracy, no institutions are free from politics.²⁸

Young argues that legislations played significant roles in the mushrooming of bureaucracy.²⁹ Government structure is likely the second most significant reference, after the Constitution that citizens use to think about their government.³⁰ Young suggests that in the US federal government, the mushrooming of bureaucracy was mostly a twentieth-century development, created in part by statutes passed by Congress and in part by presidential executive order. Evidently, politics and legal rules have played significant roles in producing the large governing structure.³¹ It is vital to include the relationship between bureaucracy, politics and legislation framework when discussing issues related to reorganisation in government institutions. Pollitt and Bouckaert note that, in understanding how politics become constraints to reform, it is important to examine the frontier and the relationship between civil service and politicians.³²

Legislation is a key aspect of any form of governance. However, there is a paucity of literature discussing the legislation obstacles to reorganisation in the Indonesian government. Chua suggests that there is an evident trend in the literature surrounding Southeast Asian countries—discussions of socio-legal issues focus on the relationships between laws and Islamic or customary norms, gender equality, land and the environment.³³ Few authors discuss how politics and statutes constrain reorganisation

²⁶ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

²⁷ *Ibid*; *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

²⁸ M Carausan, 'Institutional Uncertainties of the Rule of Law: The Public Prosecutor's Office between the Executive and Judiciary' (2009) (28E) *Transylvanian Review of Administrative Sciences* 104.

²⁹ Nancy Beck Young, 'The Politics of Bureaucracy' (2015) 43(2) *Reviews in American History* 327.

³⁰ *Ibid* 328.

³¹ *Ibid*.

³² Pollitt and Bouckaert (n 23).

³³ Lynette J Chua, 'Charting Socio-Legal Scholarship on Southeast Asia: Key Themes and Future Directions' (2014) 9(1) *Asian Journal of Comparative Law* 5.

in Southeast Asian countries, particularly in Indonesia. Considering the gap in existing literature surrounding these matters, it is evident that this thesis will enrich knowledge on the extent to which political and legislative influences shape reorganisation in the Indonesian government.

1.2 Context and Theoretical Framework

A literature review is generally required before research begins to help the researcher rationalise the research questions and situate the study within the context of the relevant discourse.³⁴ This section seeks to consider reorganisation within the broader context of public administration theories and the principles of administrative laws. However, not all of the principles of public administration and administrative laws will be addressed; only selected principles are presented in this section. The examination of these particular theories and principles is important, as this thesis is a socio-legal study that covers aspects of public administration and administrative laws, as well as the areas of political science and public policy.

Literature discussing the nature of public administration and administrative law in the Indonesian context is lacking, despite these two areas being very broad. This section discusses the theories and principles of international scholars, selected to be as relevant as possible to the Indonesian context. March and Olsen argue that administrative reform is influenced by the institutional and historical context within which it takes place.³⁵ As political-topographical features vary between countries, challenges facing reform in Indonesia may be different from those in other countries.

Bureaucracy reform has enjoyed significant support in many countries; it has manifested in various ways, under numerous labels and within different national contexts.³⁶ Most of these reforms have intended to change the culture of the public sector to enable increases in efficiency, effectiveness and accountability.³⁷ Public

³⁴ John W Creswell, *Qualitative Inquiry & Research Design: Choosing among Five Approaches* (SAGE Publications, 3rd ed, 2013).

³⁵ James G March and Johan P Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (Free Press, 1989), 96.

³⁶ Barbara S Romzek, 'Dynamics of Public Sector Accountability in an Era of Reform' (2000) 66(1) *International Review of Administrative Sciences* 21.

³⁷ Lucien Peters, 'Downsizing the Civil Service in Developing Countries: Golden Handshakes or Smiling Farewells?' (1998) 18(4) *Public Administration & Development (1986-1998)* 381; Romzek (n 36).

sector reform is a sustainable process—Peters states ‘civil service reform should not be seen as an end in itself’.³⁸ Initiatives that are sustainable long-term and receive adequate support are valuable and rare in developing countries.³⁹

Public administration and administrative law are vast areas. Systematically evaluating literature in such broad areas presents a challenge. Some scholars have questioned whether public administration is a separate discipline, or simply a sub-discipline of political science.⁴⁰ It is often discussed as a confused discipline.⁴¹ Scholars debate whether it should be independent of political science, in the same field or as a branch thereof.⁴² This section examines some major theories in public administration, then examines administrative law principles and the principles of reform and reorganisation. This examination is important, as this thesis is socio-legal research that combines political science, public policy and legal research.

1.2.1 Major Theories in Public Administration

There are, at least, three major public administration theories, namely neo-institutionalism, rational choice theory and governance theory.⁴³ The first, neo-institutionalism, sees institutions as both shaping and being shaped by individuals.⁴⁴ It reveals that public sector organisation is not as simple as it looks. Pollitt suggests that the public sector is, in this regard, ‘...like a sedimentary geological formation, with different aspects of culture and structure surviving alongside or on top of each other from different periods of time’.⁴⁵

The study of institutions is the root of political science.⁴⁶ The theory of neo-institutionalism was conceived by March and Olsen, who are regarded as the key

³⁸ Lucien Peters (n 37).

³⁹ Ibid.

⁴⁰ Kenneth J Meier, ‘The Public Administration of Politics, or What Political Science Could Learn from Public Administration’ (2007) 40(1) *PS: Political Science & Politics* 3; P Edward French, Robert A Spears and Rodney E Stanley, ‘The Fifth Paradigm of Public Administration? Public Organizational Theory as Possible Solution to the Perennial Big Questions of Public Administration’ (2005) 8(2) *International Journal of Organization Theory and Behavior* 133.

⁴¹ French, Spears and Stanley (n 40).

⁴² Ibid.

⁴³ Christopher Pollitt, *Advanced Introduction to Public Management and Administration* (Edward Elgar Publishing, 2016).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ B Guy Peters, *Institutional Theory in Political Science: The New Institutionalism* (Continuum, 3rd ed, 2012) (*‘Institutional Theory’*).

theorists in the area.⁴⁷ Neo-institutionalism emerged in response to both economic and social-psychological explanations of political issues, which March and Olsen claimed were reductionist, instrumentalist and individualist.⁴⁸ March and Olsen contend that these approaches threaten the concept of institutionalism. They reject the assumption that individuals are only involved in institutions for personal and material gain and argue that an institution can affect an individual's behaviour and preferences.⁴⁹ They argue that institutions are not only defined by their legal status and formal powers, but also by the procedures and structures that shape their values, norms and beliefs.⁵⁰ Their approach does not deny the importance of individual decisions, but assumes that decisions are made under the strong influence of organisational context. Pollitt commented:

Powerful organisations can themselves be viewed as a sort of actor, they argue, and they play an important role in shaping the norms and values of their members. Most decisions within such organisations are driven by the desire to act appropriately rather than by the desire to achieve some consequence of personal importance to the individual actor.⁵¹

March and Olsen advocated for public administration as its own discipline. They argue that legal rules have significant implications for government institutions. Such rules are regarded as a 'logic of appropriateness.'⁵² This 'logic of appropriateness' sees that institutions can influence their members' behaviour—organisational members will act according to norms within the organisation.⁵³ March and Olsen state:

[I]nstitutions are collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations. The process involved determining what the situation is, what role is being fulfilled, and what the obligations of that role in that situations are. When individuals enter an institution, they try to discover and are taught the rules. When they encounter a new situation, they try to associate it with a situation for which rules already exist. Through rules

⁴⁷ Pollitt (n 43).

⁴⁸ B Guy Peters (n 46) 45.

⁴⁹ Ibid.

⁵⁰ March and Olsen (n 35).

⁵¹ Pollitt (n 43).

⁵² March and Olsen (n 35) 37.

⁵³ Ibid 160.

and a logic of appropriateness, political institutions realize both order, stability, and predictability, on the one hand, and flexibility and adaptiveness on the other.⁵⁴

However, March and Olsen's theory has a weakness. Evidence supporting the assumption that institutions produce individuals' behaviour is insufficient.

The second theory is the rational choice theory. Rational choice theory not only applies to public administration, but also to other disciplines that deal with human behaviour, including economics, politics, sociology, psychology and behavioural biology.⁵⁵ Rational choice theory is different from neo-institutionalism, since it begins with individuals rather than institutions. It is the antithesis of the neo-institutionalist approach. The focus of this theory is how individuals make choices. It does not necessarily ignore organisational or institutional factors. Institutions are still important in rational choice, as they provide a framework of incentives, penalties and rules, within which individuals make their decisions.⁵⁶ The fundamental argument of this theory is that the individual's primary motivation when making choices is based on how to maximise the satisfaction of their preference. This assumption is derived from the economic approach to politics.⁵⁷

Since the rational choice theory is based on the assumption of individualism, or self-interest, Olson argued that it would be difficult for individuals within an organisation to work together to achieve collective goals.⁵⁸ While rational choice literature often focuses on the relationship between individuals within an institution,⁵⁹ it focuses more on the extent to which they perceive each other as credibly committed to the cooperative relationship, rather than the level of the participants' commitment to the institution as an entity.⁶⁰ However, there are doubts concerning this commitment to

⁵⁴ Ibid.

⁵⁵ R J Herrnstein, 'Rational Choice Theory' (1990) 45(3) *American Psychologist* 356; Gianluca Manzo, 'Is Rational Choice Theory Still a Rational Choice of Theory? A Response to Opp' (2013) 52(3) *Social Science Information* 361.

⁵⁶ Pollitt (n 43).

⁵⁷ Mark Bevir, *Key Concepts in Governance* (SAGE, 2009).

⁵⁸ Daniel V A Olson, 'Choice and Religion: A Critique of Rational Choice Theory by Steve Bruce' (2000) 79(1) *Social Forces* 358.

⁵⁹ Peter J Robertson and Shui-Yan Tang, 'The Role of Commitment in Collective Action: Comparing the Organizational Behavior and Rational Choice Perspectives' (1995) 55(1) *Public Administration Review* 67.

⁶⁰ Ibid.

cooperation, as individuals may waver in their commitment if they see potential benefit to themselves.⁶¹

The third theory is governance theory. It is more recent than both neo-institutionalism and rational choice theory. The central focus of governance theory is neither the individual nor the organisation; it is focused on the entire system, across both public and private sectors that participate in public sector decision-making and public services.⁶² Terms of governance often mark changes in the nature of the government and have been associated with administrative reform in recent decades.⁶³ Governance theory has become mainstream in public administration in most parts of the world.⁶⁴ It emphasises collaboration and networking between government institutions, the economy and society.⁶⁵

Governance theory is based on the assumption that society has become more diverse, fragmented, and complex and so has policy-making. For effective policy-making and efficient delivery of policies, governments are required to work together with a wide range of non-government actors.⁶⁶ Sørensen and Jacob argue that such relationships have become ‘a necessary ingredient in the production of efficient public governance in our complex, fragmented, and multi-layered societies.’⁶⁷

Widespread use of governance frameworks across governments has stimulated the adoption of the ‘good governance’ concept. This concept is now regularly used in political science and public administration. However, the principles and assumptions are still debated. Different perspectives, principles and practices have been subject to debates among scholars in an effort to define ‘good governance.’⁶⁸ Agere describes the general character of good governance:

Good governance is therefore, among other things, participatory, transparent and accountable, in order to ensure that political, social, and economic priorities are

⁶¹ Olson (n 58).

⁶² Pollitt (n 43).

⁶³ Sam Agere, *Promoting Good Governance: Principles, Practices and Perspectives* (Commonwealth Secretariat, 2000).

⁶⁴ Jonathan S Davies, *Challenging Governance Theory: From Networks to Hegemony* (Policy, 2011).

⁶⁵ Ibid 1.

⁶⁶ Pollitt (n 43).

⁶⁷ Eva Sørensen and Jacob Torfing, ‘Network Governance and Post-Liberal Democracy’ (2005) 27(2) *Administrative Theory & Praxis* 197.

⁶⁸ Agere (n 63).

based on a broad consensus in society, and that the voices of the poorest and most vulnerable are heard in the decision-making processes regarding the allocation of resources. Defined in this manner, good governance has major implications for equity, poverty, and quality of life. Political governance is the process of decision-making to formulate policy. Administration governance is the system of policy implementation. Encompassing all three, good governance defined the process and structures that guide political and socio-economic relationship.⁶⁹

Davies posits that the governance framework arises for several reasons, namely:⁷⁰

- a. the need for public participation in policy-making to build public trust;
- b. the information and technology revolution catalysed the widespread use of social networks and led to an unprecedented flow of information that cannot be controlled;
- c. reforms have fragmented governmental capacity, creating the need for collaboration between governments, markets and civil societies.

Good governance is at the highest stage of its development when a democratic form of administration is in place, public services are delivered efficiently and the government is transparent, accountable and productive.⁷¹ This thesis examines the governance aspect of reorganisation in Indonesia.

Also crucial to governance is the framework of administrative law. It provides a legal basis for any government to operate and perform its functions. The next subsection examines the principles of administrative law. It discusses the definition and scope of administrative law and its relationship with constitutional law.

1.2.2 Administrative Law Principles

1.2.2.1 What is Administrative Law?

This thesis is framed within the Administrative law principles. Administrative law is an essential part of governance, which provides a legal foundation for managing

⁶⁹ Ibid.

⁷⁰ Davies (n 64).

⁷¹ Agere (n 63).

government administration.⁷² Ellis-Jones defines administrative law as a branch of public law that is primarily concerned with the functions, powers, and responsibilities of the executive arm of government and certain non-governmental bodies (often referred to as ‘domestic tribunals’).⁷³ In addition, administrative law is concerned with issues of extra-judicial ‘administrative review’, which involve assessing decisions made by administrators and other mechanisms to ensure the accountability of public administration.⁷⁴

Similarly, Katzen and Douglas define administrative law as ‘the body principles, practices, and institutions which provide for supervision, regulation and structuring of the exercise of power of the government.’⁷⁵ It is the body of principles that govern the relationship between the government and the governed.⁷⁶ Head states that to understand the scope of administrative law, it should be placed in its historical, political, socio-economic context, as well as its constitutional, institutional, bureaucratic and policy settings.⁷⁷ He further states:

Administrative law is about challenging official power. Hence, it is, by definition, strongly influenced by political considerations. Administrative law is concerned with defining the powers of the state, as well as protecting, or limiting, the rights and liberties of citizens. As such, it is a constant battleground. It is therefore vital never to assume that a government or official agency has the legal authority to do what it has purported to do ...

Administrative law is primarily an area of public law that regulates the relationship between the citizen and the state. This is wider than ensuring that an administrative body acts within the law. It involves understanding the way governments operate, the nature of the administrative power and process, the function of those who participate in it, and the practices procedures, manuals, guidelines and other internal policies or rules which may influence the way they behave. It also requires a keen

⁷² Ming-Sung Kuo, ‘From Administrative Law to Administrative Legitimation? Transnational Administrative Law and the Process of European Integration’ (2012) 61(4) *The International and Comparative Law Quarterly* 855.

⁷³ Ian Ellis-Jones, *Essential Administrative Law* (Cavendish Publishing, 1997) 1.

⁷⁴ *Ibid.*

⁷⁵ Hayley Katzen and Roger Douglas, *Administrative Law* (Butterworths, 1999).

⁷⁶ *Ibid.*

⁷⁷ Michael Head, *Administrative Law: Context and Critique* (Federation Press, 3rd ed, 2012).

sensitivity to various ways in which commercial, economic, and political pressures impact on governments, administrators, tribunals, and courts.⁷⁸

Administrative law is a branch of public law. Traditionally, administrative law also includes the laws that govern the structure of the bureaucracy.⁷⁹ However, despite the fact that administrative law is an essential determinant of how the government manages administration, Head posits that it tends to be left as the focus of public administration.⁸⁰ Understanding the scope of administrative law is to also understand its historical, political, socio-economic context, and its constitutional, institutional, bureaucratic and policy situations.⁸¹ The scope of administrative law is discussed in the next part of this subsection, followed by a discussion on its relationship with constitutional law.

1.2.2.2 The Scope of Administrative Law

Head observes that administrative law is formed by economic and financial interests, underlying political traditions and interests and the need for official expediency.⁸² Bishop assumes that the primary goal of administrative law is neither to create a big or small government; instead, it should have an objective to create a better government.⁸³ Hence, administrative law should be able to help to reduce the agency cost of inefficient governance.⁸⁴ It is a body of law that developed to ensure and promote greater government accountability and transparency.⁸⁵ Administrative law is full of technicalities.⁸⁶ Compared with other areas of law, Head argues that administrative law is more filled up with political debates.⁸⁷

Administrative law is considered ‘public law’ as it deals with accountability and disputes in the public realm.⁸⁸ The public, in this context, comprises central or local governments, their departments and other statutory bodies.⁸⁹ If a legal dispute arises

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ William Bishop, ‘A Theory of Administrative Law’ (1990) 19(2) *The Journal of Legal Studies* 489.

⁸⁴ Ibid.

⁸⁵ Sarah Anne Withnall and Michelle Evans, *Administrative Law* (LexisNexis Butterworths, 2010) 5.

⁸⁶ Head (n 77).

⁸⁷ Ibid 14.

⁸⁸ Withnall and Evans (n 85).

⁸⁹ Ibid.

in the private realm, administrative law will not apply. Activities outside the public sphere are governed by private laws, such as contract, tort and family law.⁹⁰ However, if there is a dispute involving a government institution, administrative law can be applied.⁹¹ The distinct feature of administrative law, compared with other areas of law, is that it cannot be separated by contemporary political debates, as Head states:

Many debates surround the impact on administrative law of the often competing demands of legal requirements, administrative functions, political and policy constraints, and economic and social considerations. The weight of these factors varies, depending on the type of administrative processes involved and the status of the parties affected.

A wide variety of issues arises in administrative law, often very interesting and even controversial. In many instances, it is crucial to make an assessment of the various political and socio-economic forces at work, as well as the precise legal questions. Rigorous attention to legal detail is vital, but how the legal arguments can be most effectively brought to bear may depend on the circumstances.⁹²

1.2.2.3 Administrative Law and Its Relation to Constitutional Law

Most constitutions tend to say relatively little about administrative structure, though the establishment of government structure is a core function of the constitution.⁹³ The rules governing the selection and function of the President and legislative and judicial powers in Indonesia are described in the Indonesian 1945 Constitution. However, it does not detail rules regulating the sub-political institutions. In this regard, Ginsburg, in Rose-Ackerman and Lindseth (eds), states:

Written constitutions tend to focus on providing chains of accountability and democratic legitimacy for the decisions of administrators, rather than detailed rules regulating the administration. In other words, constitutions tend to regulate administration structurally rather than legally.⁹⁴

⁹⁰ Ibid; Katzen and Douglas (n 75).

⁹¹ Withnall and Evans (n 85).

⁹² Head (n 77).

⁹³ Susan Rose-Ackerman and Peter L Lindseth, *Comparative Administrative Law* (Edward Elgar Publishing Limited, 2011) 123.

⁹⁴ Ibid.

The constitution has a role in establishing a broader structural apparatus of governance and accountability.⁹⁵ Administrative law often overlaps with constitutional law. Yet, there is a clear line between the two. Constitutional law can decide that a statute is unconstitutional, while administrative law takes legislation as a binding authority.⁹⁶ In understanding the administrative law of a country, it is important to examine its political, legal and constitutional history. Several key concepts are necessary for an understanding of administrative law, such as separation of powers and the role of each branch of power.⁹⁷ The traditional understanding was that the constitution and administrative law shared common goals concerning the protection of rights, the control of agencies and the limitations of government.⁹⁸ Katzen and Douglas state:

Administrative law has developed within a constitutional framework defined both by law and concepts. The development of administrative law was itself fashioned by constitutional concepts, such as the rule of law, separation of powers and responsible government. Constitution principles are often discussed as part of administrative law, because in providing for the structure of government, they often control the operation of the state by limiting the power at the disposal of officials.⁹⁹

There is a close relationship between constitutional law and administrative law. The differences between the two are obscure, particularly when discussing certain areas, such as the state and its authority, the power of the executive and public rights. Some scholars advocate for not making a dichotomy between constitutional law and administrative law and posit that administrative law is a part of constitutional law.¹⁰⁰ In this view, administrative law is regarded as a *lex specialist* of constitutional law.¹⁰¹

Nevertheless, constitutional law is somewhat different from administrative law. Constitutional law discusses the functions between branches of power, while administrative law focuses on the relationships between those branches and,

⁹⁵ Ibid 117.

⁹⁶ Head (n 77) 2.

⁹⁷ Ibid.

⁹⁸ Rose-Ackerman and Lindseth (n 93).

⁹⁹ Katzen and Douglas (n 75) 4.

¹⁰⁰ Ibid.

¹⁰¹ W Riawan Tjandra, *Hukum Administrasi Negara* (Universitas Atma Jaya Yogyakarta, 2008); Sudrajat Tedi, 'Perwujudan Good Governance Melalui Format Reformasi Birokrasi Dalam Perspektif Hukum Administrasi Negara' [Implementation of Good Governance through Bureaucratic Reform in Perspective of Administrative Law] (2009) 9(2) *Journal of Dinamika Hukum* 118.

additionally, the relationship between branches of power and the people.¹⁰² Similarly, Ginsburg states that ‘constitutional law regulates the highest norms of the state, while administrative law governs sub-legislative action, somewhat lower in the hierarchy of sources, and hence in importance.’¹⁰³ Further, universities’ separation of constitutional and administrative law and their separate practice in public sector institutions support the view that constitutional law is different from administrative law.¹⁰⁴

However, Ginsburg argues that administrative law is more ‘constitutional’ than the constitution itself:

[M]any would place the function of *constitutionalism* itself or limitation of government by law, at the fore. With regard to this limiting function, it is quite obvious that administrative law overlaps a good deal with constitutional law, and has a wider scope in the sense that it touches far more behavior. The average citizen is not a dissident who is concerned with the state limiting her political speech; nor is the average citizen a criminal concerned with criminal procedure provisions in constitutions. Rather the average citizen encounters the state in myriad petty interactions, involving drivers’ licenses, small business permits, social security payments, and taxes. It is here that the rubber meets the road for constitutionalism, where predictability and curbs on arbitrariness are least likely to be noticed but most likely to affect a large number of citizens. So it seems clear that administrative law is constitutionalist in orientation and arguably more important to more people than the grand issues of constitutional law.¹⁰⁵

At a symbolic level, there is one function of the constitution that administrative law cannot accomplish—a constitution constitutes the nation and binds its citizens together through the same goals and understandings.¹⁰⁶ Perhaps not all constitutions have this symbolic role, but most do. In contrast, administrative law rarely has this symbolic function.¹⁰⁷ However, administrative law is still worthy of greater attention, as Ginsburg states:

¹⁰² Tjandra (n 101).

¹⁰³ Rose-Ackerman and Lindseth (n 93).

¹⁰⁴ Tjandra (n 101).

¹⁰⁵ Rose-Ackerman and Lindseth (n 93).

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

But this symbolism is in turn based on an illusion and a misunderstanding of the crucial constitutional characteristics of endurance and localism. Constitutions serve as important symbols because people believe they do things that they do not. Administrative law systems, in turn, are more localized and more enduring, and hence worthy of greater attention in trying to understand the effective legal regulation of government. ... Administrative law concerns the control of regulatory institutions, and regulatory institutions are difficult to establish. Once established, they are even harder to get rid of. An alternative to eliminating agencies is to seek to exercise greater control over them, and administrative law becomes a natural solution.¹⁰⁸

In addition to being written within the framework of administrative law, this thesis is also written within the framework of political science and public management. This study examines how politics and statutes restrain reform and reorganisation. Therefore, the next part of this section discusses the principles of reform and reorganisation, as presented in the relevant literature.

1.2.3 Reform and Reorganisation Principles

Pollitt and Bouckaert define public sector reform as ‘deliberate changes to the structures and processes of public sector organisations with the objective of getting them (in some sense) to run better’.¹⁰⁹ The key terms of this definition include ‘changes’, ‘structures’, ‘processes’ and ‘organisations’. All government institutions are subject to change,¹¹⁰ and changes to structures and organisations are normal consequences of reform. Pollitt and Bouckaert state that ‘structure and processes’ could refer to the organisational structures of ministries and agencies, processes within the organisation or to relevant legal and administrative relationships; ‘getting them to run better’, they say, could mean ‘to run more efficiently’.¹¹¹

Governments at the national level usually formally take the key reform initiatives; the process tends to begin in the upper, rather than the lower, level governance.¹¹² Politics

¹⁰⁸ Ibid.

¹⁰⁹ Pollitt and Bouckaert (n 23).

¹¹⁰ Dongryul Kim, ‘Bureaucratic Institutions and Economic Reforms: The Effects of Disrupted Post-retirement Incentive Structures on the Performance of Korean Officials’ ProQuest Dissertations Publishing, 2006).

¹¹¹ Pollitt and Bouckaert (n 23).

¹¹² Ibid.

and legislation framework can both drive and restrain reform and the political system often has a strong influence on the process of public policy decision-making.¹¹³ This framework is relevant to this research, as this research intends to examine political and statutory impediments to reform in the Indonesian government, at the national level.

The public sector is considered the steering centre of society in many political theories.¹¹⁴ In keeping with this, Palombara argues that major changes in society are almost impossible to conduct without a large amount of intervention from the government.¹¹⁵ The government sometimes becomes the sole entity to bear the responsibility of transformation.¹¹⁶

Basic changes in social and economic structure require the optimisation of bureaucratic capacity.¹¹⁷ The bureaucracy needs to be reformed when the government finds that they cannot perform as expected, in regards to achieving policy goals, because of poor performance, swollen bureaucracies, incompetent civil service and ineffective administration.¹¹⁸ However, history shows that reform in the public sector often goes beyond the aspect of managerialism.¹¹⁹

The nature of the government at the national level and the relationship between political elites and civil servants are key features in reform.¹²⁰ The nature of the government is a mixture of structural and functional elements, including the nature of the political system.¹²¹ To understand how politics restrain reform and reorganisation, it is important to examine the boundary between civil service and politicians and their relationship to one another.¹²² There is a strong relationship between politics, bureaucracy and institutional reform. This relationship, and the legislation framework, are vital to consider when discussing issues related to the restructuring of government institutions.

¹¹³ Ibid.

¹¹⁴ Palombara (n 24).

¹¹⁵ Ibid 194.

¹¹⁶ Ibid 195.

¹¹⁷ Ibid.

¹¹⁸ Caiden (n 8).

¹¹⁹ Ibid 30.

¹²⁰ Pollitt and Bouckaert (n 23)

¹²¹ Ibid.

¹²² Ibid.

In a contrasting study, which examines reform in Jordan, Tbaishat asserts that a large bureaucratic structure is the root of inefficiency—particularly when governance is linked to a country's economy.¹²³ However, to understand issues in public sector governance, dealing only with the relationship between economy and governance is not sufficient. Other aspects should be included, one of which is the organisation of the public sector and its influence on public sector operations.¹²⁴ The economic aspect alone is not sufficient to determine the outcome of reform. In this regard, an examination of duplication, which causes inefficient operation, is also important.¹²⁵

Every government institution is subject to change, and such change is often politically driven.¹²⁶ However, reform does not always obtain the necessary political support. Caiden argues that reform agendas often receive insincere support from top-level politicians or bureaucrats, since they are careful to conduct reform which does not threaten their power, position and popularity.¹²⁷ Besides, policymakers rarely have a strong commitment to feedback and evaluation in public sector reform.¹²⁸

Reorganisation is a principal instrument of administrative reform.¹²⁹ It is the primary need of reform.¹³⁰ The need for reorganisation often arises out of the need to reduce public expenditure, with the hope that the productivity of the public sector will improve.¹³¹ This finance-driven reform often results in downsizing.¹³² The assumption is that a reduction of structures and personnel will result in savings.¹³³ Nevertheless, bureaucracy reform may go wrong and spin-off in unforeseen directions. Stokes and Clegg state that reform does not always introduce the effects of good governance.¹³⁴ They observe that reform may create an unaccountable and personally politicised elite

¹²³ Rami Mohd Tbaishat, 'Administrative Reform in Jordan: Urgency for Reforming the Bureaucracy Structure' (2015) 5(2) *International Review of Management and Marketing*, 45.

¹²⁴ Franz-Xaver Kaufmann (ed), *The Public Sector: Challenge for Coordination and Learning* (W. de Gruyter, 1991).

¹²⁵ Young (n 29) 329.

¹²⁶ Kim (n 110).

¹²⁷ Caiden (n 8).

¹²⁸ Pollitt and Bouckaert (n 23) 17.

¹²⁹ Ron Seyb, 'The Death and Rebirth of Reorganization Planning: Symbolic Action, Divided Government, and Orthodox Administrative Theory's Enduring Appeal' (1994) 24(4) *Presidential Studies Quarterly* 725.

¹³⁰ Caiden (n 8) 81.

¹³¹ Agere (n 63) 31.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Jon Stokes and Stewart Clegg, 'Once Upon a Time in the Bureaucracy: Power and Public Sector Management' (2002) 9(2) *Organization* 225.

and demoralised civil servants, where some senior civil servants engage in a struggle for power.¹³⁵

In regards to political and statutory impediments to bureaucracy, Young argues that legislations passed by Congress have played significant roles in the mushrooming of administration.¹³⁶ As such, political and legal rules have played significant roles in producing large and fragmented governing institutions, many of which have overlapping functions and authorities.¹³⁷ Bozeman's study views legal rules and procedures as the closest relative of red tape. One of the legal constraints in bureaucracy is 'the rule entropy'—a condition where regulations that are applied in many organisations can be applied differently between them.¹³⁸ The more organisations, levels of the organisation and authorities involved in applying such legal rules, the more likely that the meaning of the rules will be lost and create red tape.¹³⁹ Bozeman claims that an overregulated bureaucracy may cause organisations or individuals to interpret rules differently and become inefficient; he argues that too many governing rules can be a constraint to public sector management and lead to inefficient use of resources.¹⁴⁰

Still, legal rules are the central feature of public sector management.¹⁴¹ Bevir suggests that legal rules should be viewed as a 'moral concept' rather than as a blueprint for institutional structure.¹⁴² Bevir does not discuss how legal rules can become a constraint for reorganisation, even though legal frameworks are a key aspect of improving public sector management and encouraging good governance.¹⁴³ It is difficult, in particular, to find literature discussing the extent of the legislation challenges facing bureaucracy reform in Indonesia. This aligns with findings reported by Chua, who says that there is an imbalance in how literature in Southeast Asian countries discusses socio-legal issues, as authors tend to discuss laws in relation to

¹³⁵ Ibid.

¹³⁶ Young (n 29) 328.

¹³⁷ Ibid.

¹³⁸ B Bozeman, 'A Theory of Government "Red Tape"' (1993) 3(3) *Journal of Public Administration Research and Theory* 273.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Bevir (n 57).

¹⁴² Ibid.

¹⁴³ Agere (n 63).

Islamic or customary norms, gender equality, land and the environment.¹⁴⁴ There is a lack of literature that discusses the intersection of laws and public administration in the Indonesian context.

Bozeman concludes that abundant legal rules have a negative effect. However, beyond this claim, he provides no real evidence. Therefore, further examination of how legal rules can be a constraint to bureaucracy is required. Further, a study by Goldfinch, DeRouen and Pospieszna posits that administrative reform may have mixed effects in different countries with different administrative laws.¹⁴⁵ Their study also notes the issue of there being insufficient reliable data on how laws affect public sector reform, particularly in developing countries.¹⁴⁶ Thus, more detailed work is needed, particularly in the Indonesian context.

1.3 Research Questions and Objectives

The overall purpose of this thesis is to examine the governance structure of bureaucracy reform in Indonesia, particularly in the area of organisational changes, and to investigate the extent to which political and statutory aspects influence and constrain reorganisation. It argues that successful reform is dependent on capability to overcome the political and statutory challenges of reorganisation. This thesis proposes a new legislative framework to support reorganisation that not only takes into account how politics shape the organisation of bureaucracy, but also the current statutory framework and legal culture in reorganisation. More specifically, this thesis addresses the following research questions:

1. Does the legislation and surrounding political interests constrain reorganisation in Indonesia?
2. Would a bloated bureaucracy result in the need to reform, and what realistic reform measure can be implemented to overcome the political and statutory challenges in reorganisation?

¹⁴⁴ Chua (n 33).

¹⁴⁵ Shaun Goldfinch, Karl DeRouen and Paulina Pospieszna, 'Flying Blind? Evidence for Good Governance Public Management Reform Agendas, Implementation and Outcomes in Low Income Countries' (2013) 33(1) *Public Administration & Development* 50.

¹⁴⁶ Ibid.

To answer these questions, three objectives provide the framework for this thesis:

1. To understand the progress of, and the current practice of, bureaucracy reform in Indonesia.
2. To investigate the political and statutory aspects of reorganisation and the extent to which they shape the bureaucracy and constrain bureaucracy reform in Indonesia.
3. To determine the legislation reform required to overcome the political and legislative problems facing reorganisation and develop a new legislation framework to support reorganisation.

1.4 Research Design and Methods

1.4.1 Methodological Approach

To answer the research questions, this thesis took a qualitative approach to identifying political and statutory challenges, to reform the extent to which these challenges shape the governance structure of the Indonesian bureaucracy. Auerbach and Silverstein describe the qualitative approach as hypothesis-generating research.¹⁴⁷ Creswell defines it as a research process that uses inductive data analysis to understand the issues.¹⁴⁸

Qualitative methodology is characterised as inductive, emerging and shaped by the experiences of the researcher when collecting and analysing data.¹⁴⁹ This research used an approach from a social constructivism interpretive framework, in which multiple realities are constructed through experiences and interactions with others.¹⁵⁰ The inductive method was employed in this research, through interviewing and analysis of texts.

This thesis combined political science, public policy and management and legal research concerning administrative laws to answer its research questions and form

¹⁴⁷ Carl Auerbach and Louise B Silverstein, *Qualitative Data: An Introduction to Coding and Analysis* (NYU Press, 2003).

¹⁴⁸ Creswell (n 34).

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

conclusions. Data were collected through a combination of desk-based study and in-depth interviews.

The Ministry of Administrative and Bureaucratic Reform (MoABR) of the Republic of Indonesia is responsible for formulating policies and conducting administrative reform in the ministries and agencies of the central government.¹⁵¹ This thesis comprises a case study, which examined the process of reorganisation conducted by the MoABR in national level government institutions and examined the political and statutory impediments surrounding that reorganisation.

1.4.2 Research Paradigm

This thesis is a socio-legal study that covers aspects of public administration and administrative laws, as well as political science and public policy. This study falls within the regulation perspective. This standpoint is concerned primarily with the necessity for the rule of societies or human behaviour.¹⁵² The regulation perspective is relevant to this research as concerns how institutional reform can be improved—and this research concerns how public sector organisation can overcome the political and statutory challenges of reorganisation. This research employed an interpretive paradigm, which has the same meaning as interpretivism.¹⁵³ The concern of this paradigm is to understand the essential values in the organisation, with the main focus of finding irrationalities.¹⁵⁴ This paradigm takes the researcher into the realm of politics in the Indonesian bureaucracy, where they can observe how power is used and how legislations are applied.¹⁵⁵

There are three types of legal research, namely doctrinal research, socio-legal studies and international and comparative legal research.¹⁵⁶ This research is a socio-legal study that combines political science, public policy and management and legal research in the area of administrative law. The benefit of using other disciplines to support legal

¹⁵¹ *Presidential Regulation 07/2015 on the Organisation of the State Ministries*, art 91 <<http://sipuu.setkab.go.id/PUUdoc/174380/Perpres%20Nomor%207%20Tahun%202015.pdf>>.

¹⁵² Mark Saunders, Philip Lewis and Adrian Thornhill, *Research Methods for Business Students* (Harlow Pearson Education, 7th ed, 2016) 132.

¹⁵³ *Ibid* 134.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid*.

¹⁵⁶ Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press, 2007).

research is been widely known and socio-legal research expands legal discourse, which guides the course of the research and methodologies to produce evidence to answer the research questions.¹⁵⁷ Socio-legal research is defined as qualitative and categorised under ‘problems, policy and law’ reform based research, which involves the consideration of social factors and the social effects of current practice and law.¹⁵⁸ This research can be categorised as socio-legal research, since it examines the political and legal problems facing the reorganisation of public institutions and considers the effects of social factors (politics) and relevant laws in institutional reform.

The components of the research paradigm are ontology, epistemology, methodology and methods.¹⁵⁹ Ontology refers to the perception of the nature of reality.¹⁶⁰ The approach to this research was that reality is subjective, since the reality in this study was the participants’ points of view.¹⁶¹ The epistemology of this study was interpretivism, wherein the participants created meanings which were different from the physical phenomenon to which they referred.¹⁶² Since the primary focus of the interpretivism paradigm is to make sense of the world around us,¹⁶³ this approach aimed to create new and richer understandings and interpretations of bureaucracy reform in Indonesia, specifically related to the political and statutory challenges of reorganisation, from the perspective of the interviewees.

1.4.3 Data Collection and Analysis

1.4.3.1 In-depth interviews

The primary data were collected using face-to-face, semi-structured interviews. Key interview questions were developed to answer the research questions. Fourteen interviewees were selected, based on their capacity to conduct or influence the direction of institutional reform in Indonesia. These samples were relatively small. However, this study emphasised the rich insights from the participants rather than the sample size. These interviewees were namely:

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Saunders (n 152).

¹⁶⁰ Ibid; Creswell (n 34).

¹⁶¹ Saunders (n 152).

¹⁶² Ibid.

¹⁶³ Ibid.

1. The Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia;
2. The Deputy Minister for the Minister of Administrative and Bureaucratic Reform—Institutional Affairs and Governance, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia;
3. The Special Adviser for Minister of Administrative and Bureaucratic Reform, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia;
4. Two director-level officials at the Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, who are responsible for developing policies related to reorganisation and conducting reorganisation for technical institutions;
5. A director-level official from the Ministry of Finance of the Republic of Indonesia;
6. The Head of Division for Religion, Education and Technology at the Ministry of State Secretariat of the Republic of Indonesia;
7. The Head of Legal Division, Ministry of Trade;
8. Two professors and experts in public administration and public policy, namely the Dean of the Faculty of Public Administration at the University of Indonesia, and the Dean of the Faculty of Administration at Brawijaya University;
9. Two members of Parliament, namely Chairman of Commission I of the House of Representative (DPR) and the Head of Committee I of the House of Regional Representative (DPD);
10. A project manager for KOMPAK (*Kolaborasi Masyarakat dan Pelayanan untuk Kesejahteraan* – Public Collaboration and Services for Welfare); and
11. A senior researcher for the Parliament / House of Representatives.

Face-to-face interviews have the advantage of time and place synchronised communication; the interviewer and interviewee can react to what the other says directly.¹⁶⁴ This method also can give additional information from social cues, such as the expression, tone and gestures of the interviewee.¹⁶⁵ The benefit of semi-structured

¹⁶⁴ R J G Opdenakker, 'Advantages and Disadvantages of Four Interview Techniques in Qualitative Research' (2006) 7(4) *Forum Qualitative Sozialforschung = Forum: Qualitative Social Research*, Art. 11.

¹⁶⁵ *Ibid.*

individual interviews is the ability to develop trust, enable interviewees to express their thoughts and feelings openly and provide an opportunity for the researcher to establish personal contact with the respondents.¹⁶⁶

The study had no issue obtaining access to the informants, as the MoABR support this research. The researcher is also a civil servant at the MoABR and is sponsored by the Indonesian government. Access to the members of parliament was not difficult, as the MoABR is the counterpart of the Second Commission of the House of Representatives.

The questions in the interview plan of this study were broad and complex. To understand the problem and formulate a solution, interview questions were divided into four major groups:

1. Overview of bureaucracy reform in Indonesia:
 - i. the goals of bureaucracy reform;
 - ii. progress and achievement of reform;
 - iii. identification of major reform challenges.
2. The current practice of reorganisation:
 - i. overview of the structure of bureaucracy in Indonesia;
 - ii. what makes an effective and efficient organisation;
 - iii. the business process between and within ministries and agencies;
 - iv. reorganisation procedures and the process of organisational change.
3. Political and statutory challenges in reorganisation:
 - i. the current administration's political will regarding bureaucracy reform;
 - ii. public leaders' support for administrative reform;
 - iii. support from both executive and legislative branch of powers to reform;
 - iv. political motives for reform;
 - v. political and legislation aspects that shape the governance structure in Indonesia;
 - vi. the current legal framework for reform.
4. What are the possible solutions for political and legal problems in reorganisation?

¹⁶⁶ Saunders (n 152).

The details of the above interviews and interview plans are further discussed in Chapter 3.

1.4.3.2 Desk-study

A desk-based study was necessary to understand the political and legislative elements of the Indonesian administration. As a socio-legal study, secondary data in this research were derived from literature and archival research was conducted from various documents, such as legislations, regulations, policies and government reports and archives. The researcher examined the laws relevant to the organisation of the ministries and agencies and reorganisation activities. The body of law, together with relevant legislation and policies, was collected and analysed, with the aim of describing the body of legislation and policies and how they apply. Secondary literature relating to the Indonesian public sector was also informative on these political and legal issues.

1.4.3.3 Data Analysis

In this study, the analysis included data reduction, reorganisation and presentation, followed by drawing conclusions. The transcript was learned and similar or repetitive meaning was lessened. Grouping of responses to each question was established. The data analysis included data familiarisation, coding, searching for themes and recognising the relationship, refining themes and testing propositions and evaluation.¹⁶⁷ This research conducted data analysis using the inductive method and perspective. Saunders suggested that, in this approach, the researcher should analyse the data as it collected to develop a conceptual framework to guide the study.¹⁶⁸

1.4.3.4 Ethical Considerations

This study adhered to all of the ethics regulations standardised by Curtin University. The researcher obtained ethics approval from the Research Ethics Committee at Curtin University (Approval Number: HRE2016-0474) before the data collection process.

¹⁶⁷ Ibid 580.

¹⁶⁸ Ibid.

Generally, this research was regarded as low risk, in terms of Curtin's ethical conduct of research regulations.

1.5 Thesis Structure

This thesis comprises eight chapters. Chapter 1 presents the background of the research and defines the research problem. It articulates and justifies the methodological approach, research paradigm and data collection techniques, together with its ethical considerations. This chapter also identifies the aim and scope of the thesis.

Chapter 2 provides a literature review on Indonesian democracy and its political system. Multiple aspects of the Indonesian political and administrative system from legislation are examined in this chapter to develop a conceptual framework for this thesis. The examination of these aspects is crucial to obtain an initial understanding of how democracy and the political system in Indonesia shape and influence the posture of bureaucracy. This thesis is a socio-legal study, which covers aspects in the area of public administration and administrative laws, as well as the area of political science.

Chapter 3 details the interview process taken in this study. This chapter discusses the interview strategies and their relation to the methodological approaches. It elaborates on the selection of research participants, such as their backgrounds and criteria for the selection of the interviewees. The grouping of interview questions and some of the answers are also presented here. Chapters 4, 5, 6 and 7 provide findings based on the in-depth interviews, structured according to the grouping of the interview questions.

Specifically, Chapter 4 provides an overview of bureaucracy reform in Indonesia. It examines the goals of bureaucracy reform, followed by a discussion on the progress and achievement of reform, as well as major reform challenges. In addition, it also identifies the legal culture of bureaucracy reform and reorganisation.

Chapter 5 discusses the current practice of reorganisation. It provides an overview of the structure of bureaucracy in Indonesia, discusses the elements that constitute the 'effective and efficient' organisation, business processes and the reorganisation procedure and process. In addition, this chapter considers how reorganisation is conducted in other countries and lessons Indonesia can learn from other countries' experiences.

Chapter 6 discusses the political and statutory challenges associated with reorganisation. It addresses the second research objective: ‘to investigate the political and statutory aspects of reorganisation and the extent to which they shape the bureaucracy and constrain bureaucracy reform in Indonesia’. It examines the political attitude towards bureaucracy reform, which includes a discussion on public leaders’ support of bureaucracy reform and the extent of support from both the executive and legislative powers. Then, it discusses the political and legal aspects that shape the governance structure, the current legal framework to reform, and the problem of disharmony in laws and policies.

Chapter 7 discusses possible solutions to the political and legal problems facing reorganisation that were presented in previous chapters. It draws lessons from the findings presented in Chapters 4, 5 and 6, as well as from interview answers relevant to this theme. This chapter addresses the third research objective: ‘to address the legislation reform required to overcome the political and legislation problems facing reorganisation and develop a new legislation framework to support reorganisation.’ This chapter explores the legislation reform required to address the political and statutory challenges facing reorganisation and develop a new legislation to support reorganisation.

Chapter 8 provides conclusions, recommendations, limitations and direction for future research, with concluding thoughts from the author.

1.6 Significance

This thesis will contribute to the literature surrounding administrative law and institutional reform. It will provide knowledge of the key determinants and challenges in reorganising government bodies in Indonesia. In particular, it will identify political and statutory aspects that influence reform in the Indonesian government. The extent to which political and legal features shape public sector governance in Indonesia, particularly in organisational changes, has not been thoroughly studied. This thesis will highlight that something need to be done to overcome the political and legislative problems facing reorganisation and the bloating of the bureaucracy. Significantly, it will contribute to the development of public sector governance and the legal framework of bureaucracy reform in Indonesia. This research will help the Indonesian

government transform from rule-based administration to dynamic governance, a key for achieving success in the context of accelerating globalisation.¹⁶⁹

Practically, the significance of this thesis is that it will bring awareness to the government and legislatures of how bloated the bureaucracy is and why changes are required. As far as can be ascertained, none of the previous studies undertaken in this study area have included key determinants and a deep analysis of the political and legal aspects of Indonesian government institutional reform, nor provided recommendations for the political and legal problems facing institutional reform. This thesis will achieve research significance by filling these important gaps in knowledge. It will also contribute towards finding the best solutions to political and legal challenges when conducting organisational changes. The outcome of this study is beneficial for policymakers in developing good governance and improving the legal rules of the bureaucracy.

¹⁶⁹ Boon Siong Neo and Geraldine Chen, *Dynamic Governance: Embedding Culture, Capabilities and Change in Singapore* (World Scientific, 2007) 1.

Chapter 2: The Indonesian Political, Legislative and Administrative Framework

2.1 Introduction

Administrative law is an essential part of public administration. It provides a legal basis for the government to manage administration.¹⁷⁰ Traditionally, administrative law is the law that governs the bureaucratic structure and is primarily concerned with the function, power and responsibility of the government.¹⁷¹ As mentioned in Chapter 1, there is a close relationship between administrative law and constitutional law and administrative can operate as a *lex specialist* of constitutional law.¹⁷² The core function of the constitution is to establish functions for branches of power, while administrative law is a branch of public law that involves understanding the way governments operate, the nature of administrative power, the government's administrative process, and the function of each administrative institution.¹⁷³

This thesis is structured according to the principles of administrative law and considers the power of each political function created in the Constitution. Discussing these principles is necessary for examining the problems presented in this study. To examine how the government operates and how political pressures influence the government, this thesis first needs to examine the ultimate source of administrative power, the Constitution.¹⁷⁴ According to the 1945 Constitution, Indonesia is a democratic country where executive power lies with the government, legislative power lies with the parliament and judicial power lies with the court system.¹⁷⁵ Indonesia is a country that follows the presidential system for its administration. Based on Article 4 of the Constitution, the president holds the executive power, acting as the head of state and the head of administration; he has the authority to create ministries and government agencies as well as to appoint ministers and heads of agencies.¹⁷⁶

¹⁷⁰ Kuo (n 72).

¹⁷¹ Head (n 77).

¹⁷² Please see Section 1.2.2.3 of Chapter 1.

¹⁷³ Head (n 77).

¹⁷⁴ See Withnall and Evans (n 85).

¹⁷⁵ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

¹⁷⁶ *Ibid.*

This chapter discusses aspects of Indonesian democracy and its political system and how they shape the bureaucracy. Multiple aspects of the Indonesian democratic, political and administration system, derived from the constitution and relevant statutes, are examined in this chapter as a means to develop conceptual frameworks for this thesis. Applying these conceptual frameworks to the discussion of political and legal challenges facing institutional reform in the Indonesian bureaucracy provided findings related to the political and statutory aspects of reorganisation, as presented in the subsequent chapters. The subsequent sections provide insights into the Indonesian Constitution, branches of power in Indonesia, involvement of politics in reorganisation, the relationship between legislation and reorganisation and Indonesia's legal culture, followed by the chapter summary.

2.2 The 1945 Constitution

The 1945 Constitution was adopted on 18 August 1945, a day after Indonesia declared its independence. Over the next 57 years, Indonesia adopted four different constitutions, namely the original version of the 1945 Constitution, the 1949 Federal Constitution, the 1950 Provisional Constitution and the amended version of the 1945 Constitution. The 1945 Constitution has been amended four times (in 1999, 2000, 2001 and 2002) to become the current Constitution. These amendments were made as forms of constitutional reforms, following the downfall of Soeharto's authoritarian leadership in 1998.¹⁷⁷

The amendments to the 1945 Constitution are very significant, because the highest state organ during the period of amendments—the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* (MPR))—effectively created a new constitution.¹⁷⁸ Article 37 of the 1945 Constitution stipulates that amendments to the Constitution can be made if they are agreed upon by at least 50% plus one member of the total membership of the MPR.¹⁷⁹ At least two-thirds of the MPR membership should be present in the session to amend the Constitution. A constitutional amendment proposal can be accepted in the MPR agenda if it is submitted by at least one-third of the total

¹⁷⁷ Denny Indrayana, 'In Search for a Democratic Constitution: Indonesian Constitutional Reform 1999—2002' (2010) 17(1) *Jurnal Media Hukum*, 115.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

membership of the MPR.¹⁸⁰ No provision in the constitution is forbidden to be amended, except for the provisions relating to the form of the Unitary State of the Republic of Indonesia.¹⁸¹

During Indonesia's early years, not enough time was allowed to implement the 1945 Constitution. Shortly after the establishment of the Indonesian Government in 1945, with Sukarno and Mohammad Hatta as the first president and vice president, respectively, the newly-established government announced the so-called '*Maklumat X*' (Announcement X), whereby the government became a parliamentary government, rather than a presidential system, as intended by the 1945 Constitution.¹⁸² Indonesia then had to defend its declaration of independence through an independence war against the Netherlands, who tried to reoccupy Indonesia after Japan was defeated in the Second World War. Indonesia and the Netherlands agreed to make peace and the Netherlands acknowledged Indonesian independence in 1949, on the condition that Indonesia became a federal country, or *Republik Indonesia Serikat* (RIS), referred to as the Republic of the United States of Indonesia. The 1949 Federal Constitution was adopted for the RIS.

However, Indonesia as a federal state—the RIS—did not last long. It was dissolved on the fifth celebration of Independence Day on 17 August 1950. It was replaced with the Unitary State of the Republic of Indonesia (*Negara Kesatuan Republik Indonesia* [NKRI]) and adopted the 1950 Provisional Constitution. This constitution was intended to be temporary—until Indonesia had formed a new constitution. Under this interim constitution, Indonesia still applied a parliamentary system of government.¹⁸³

The first general election was held in 1955 and dozens of political parties obtained seats in parliament. Three biggest political parties obtained most of the seats. They were the Indonesian Communist Party (*Partai Komunis Indonesia* [PKI]), Islamic Consultative Council (*Majelis Syura Muslimin* [Masyumi]) and the Indonesian Nationalist Party (*Partai Nasional Indonesia* [PNI]). After the 1955 general election,

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Djayadi Hanan, 'Making Presidentialism Work: Legislative and Executive Interaction in Indonesian Democracy' (PhD Thesis, Ohio State University, 2012) 85 <<https://search-proquest-com.dbgw.lis.curtin.edu.au/docview/1285516928?accountid=10382>>.

¹⁸³ Ibid.

the Constituent Assembly (*Badan Konstituante*) was formed in parliament with the task of drafting a new constitution. In 1959, four years later, this assembly still had not completed the task because of heated debates between the political parties about the foundation of the state.¹⁸⁴

Following the 1955 general election, there was a widespread increase in bureaucracy politicisation and officials who were sympathisers of rival political parties were often dismissed from their office. The PNI Cabinet at the time kicked out officials who supported Masyumi and PKI, after which, the Masyumi cabinet retaliated. Soekarno, as the president at that time, saw the need to intervene and declared the Presidential Decree of 5 July 1959, which reinstated the 1945 Constitution and ended the parliamentary democracy.

Soekarno saw that political parties, during the period of the parliamentary system, were oriented toward their own ideologies, without considering national unity. Thus, Soekarno—backed by the military—saw the need to intervene, on the basis that parliamentary democracy was only ‘noises’ and not consistent with the Indonesian identity, which was based on collectivism and family values.¹⁸⁵ For Soekarno, parliamentary democracy was no different from liberal democracy; he thought it brought nothing but instability. Therefore, he tried to seize control of parliament.¹⁸⁶ Contravening the terms of the 1945 Constitution, he created his own version of parliament, with members who were appointed by him.¹⁸⁷

After a bloody conflict that led to the massacre of hundreds of thousands of alleged communists in 1967, General Soeharto came into power to replace Soekarno. Similarly to Soekarno, Soeharto saw political parties and their leaders as troublemakers. Both Soekarno and Soeharto’s administrations marked the era of authoritarianism for more than 50 years, until the downfall of Soeharto in 1998. Hanan stipulates that there were three characteristics of the Indonesian administration during these periods, namely executive dominance (including the bureaucracy), a limited degree of institutionalising

¹⁸⁴ Ibid.

¹⁸⁵ Ibid 92.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

political institutions and the development of consensus (*musyawarah mufakat*) as a political norm.¹⁸⁸

Soeharto came into power under the premise that he would commit to the 1945 Constitution. Thus, it was impossible to position the legislative power under his own control as Soekarno did. To legitimise his administration, Soeharto had to find a way to ensure that he could control the parliament and the political parties with democratic processes. Since he could not rely on the existing political parties, he created the Functional Group (*Golongan Karya* [Golkar]), supported by several intellectuals and the military. Soeharto did not call Golkar a political party. However, it was assumed to be a political force, and therefore could contest in a general election. The creation of Golkar was also to legitimise the role of the military in the administration through a doctrine of *dwi-fungsi* (dual function). This doctrine stipulates that the military serves not only as security and as a defence force, but also as a socio-political force, which could hold political and administrative positions in the government.¹⁸⁹ Golkar won the first general election in Soeharto's era, in 1971, by mobilising the structure of the administration and military across the country. It won the election by obtaining 68.2% of the votes. The massive mobilisation of the civil service, through the Corps of Civil Service (*Korpri*), and the operations of the military territorial commands (that had roots in rural areas) helped Golkar win the election.

One of the main uncertainties in the original 1945 Constitution is that it did not specify a limit on how many times the president could be re-elected. The 1945 Constitution (before the amendments) stipulates that the president and the vice president are elected by the MPR (Article 6) and shall serve their terms for five years and can be re-elected after that (Article 7). This constitution did not clearly state the term limit and that became the justification for Soeharto to be continuously re-elected and hold power for more than 30 years. Sarsito argues that the original 1945 Constitution facilitated Soekarno and Soeharto's development of an authoritarian political system.¹⁹⁰ The elasticity of the 1945 Constitution and the dominant role of the president trapped

¹⁸⁸ Ibid 86.

¹⁸⁹ Ibid.

¹⁹⁰ Totok Sarsito, 'The Indonesian Constitution 1945: Why Was It Amended?' <<https://www.researchgate.net/publication/235665343> The Indonesian Constitution 1945 Why was it amended>.

Indonesia in an authoritarian administration under the leadership of Soekarno and then Soeharto.¹⁹¹

The original 1945 Constitution was a relatively short document that comprised 37 articles, four clauses of transitional provisions and two clauses of additional provisions. This constitution was supplemented by a preamble, which set the state's five ideologies (*Pancasila*) and elucidations of each article. Indrayana argues that the current 1945 Constitution underwent such significant amendments that it became more like a new constitution.¹⁹² However, none of the political factions involved in the amendments admit that they made a new constitution.¹⁹³ Therefore, after being amended four times, from 1999 to 2001, it is still known as the 1945 Constitution.

The four amendments were described as measures to reform the constitution from a text that could potentially create an authoritarian government into a more democratic constitution.¹⁹⁴ The systematic amendments to the 1945 Constitution were seen as evolutionary changes that ended the temporary character of the 1945 Constitution. These amendments also established a clearer division of powers between the executive, legislative and judicative areas and improved human rights protection.¹⁹⁵

The downfall of the New Order regime under Soeharto paved the way for altering the 1945 Constitution. The idea of altering the 1945 Constitution culminated in 1999, when the MPR began to amend the Constitution. The 1999–2002 amendments were not an easy process, as there was strong debate over the relationship between Islam and the state and the amendments in general were protested by some retired military generals and political elites.¹⁹⁶ The debates saw the rejection of an Islamic state, in favour of a nationalist state ideology, which was stipulated in the preamble of the 1945 Constitution, the *Pancasila*.¹⁹⁷ Indrayana argues that the debates between the Islamic factions and the nationalists regarding the foundation of the state have been ongoing since the establishment of the republic:

¹⁹¹ Ibid.

¹⁹² Indrayana (n 177).

¹⁹³ Ibid.

¹⁹⁴ Ibid 121.

¹⁹⁵ Ibid 116.

¹⁹⁶ Ibid 121.

¹⁹⁷ Ibid.

Notwithstanding the agreement to keep the preamble, the Islamic factions kept fighting for the insertion of the ‘seven words’ of the Jakarta Charter into Article 29 of the Constitution, that is, for an expanded application of *syariah*. This was understood by the nationalist groups as an initial step towards establishing an Islamic state, something that the nationalist groups (including the military) saw, and still see, as non-negotiable. In the end, the insertion of the ‘seven words’ of the Jakarta Charter was rejected, just as it was during the constitutional debates of 1945 and 1956-1959.¹⁹⁸

Officially, the first amendment was made in 1999 and comprised mainly provisions linked to the presidential powers.¹⁹⁹ The idea to amend the constitution emerged soon after Soeharto’s forced resignation in 1998, during Habibie’s presidency. Soon after he was installed as the president, Habibie established popular initiatives for the better protection of human rights, released political prisoners and reformed the electoral laws. Those initiatives created a favourable atmosphere in which to suggest changing the constitution. Habibie’s initiative to bring forward the general election, which was supposed to be held in 2002, to 1999 was another critical pre-amendment arrangement. The result of the 1999 general election provided a legitimate MPR that could amend the Constitution.²⁰⁰

After the first amendment in 1999, the second amendment was made in 2000. It focused on the form of local governments, restating the form of the state, citizenship, improved protection of human rights, defence and security, the flags, language and the symbol and anthem of the republic. The third amendment in 2001 addressed the issue of people’s sovereignty, the structure and power of MPR, the presidential election, the structure and power of the regional parliaments (Dewan Perwakilan Daerah [DPRD]), the national general election and the Audit Board of the Republic of Indonesia. The last amendment, in 2002, was to dissolve the Supreme Advisory Council (*Dewan Pertimbangan Agung* [DPA]), establish the House of Regional Representatives (*Dewan Perwakilan Daerah* [DPD]) and refine the provisions related to the presidential election, national economy, education and social welfare.

¹⁹⁸ Ibid.

¹⁹⁹ Sarsito (n 190).

²⁰⁰ Indrayana (n 177).

The 1999–2002 amendments to the 1945 Constitution changed the structure of the parliament. Before these amendments, sovereignty was in the hands of the people but carried out by the MPR, which consisted of members of the House of People’s Representatives (Dewan Perwakilan Rakyat), delegates of regions and functional groups, including the military. During his leadership, Soeharto—as the President and the Chairman of Golkar—used his power to appoint members of Golkar and the military to sit in the MPR. During Soeharto’s era, with the help of the mobilisation of the bureaucracy and the military, Golkar always won the general election. Thus, the majority of MPR was under the control of Soeharto and he used the MPR as the means to preserve his power for more than three decades.²⁰¹

After the amendments, Article 2 stipulated that the members of MPR consisted of the members of DPR and the DPD. As stipulated by Article 22, the members of DPR represent the interest of political parties, and the members of DPD represent the regional, or provincial, interests. The people now directly elect the members of those two chambers. Further, the MPR is no longer the sole holder of sovereignty or the highest institution of the republic that holds unlimited power. Sarsito states:

Before amendment, MPR had the authority to carry out fully the people’s sovereignty. MPR, under the Presidential shadow, was the only one super body that could do anything they liked, including to impeach the president. After amendment, sovereignty remains in the hands of the people but must be carried out in accordance with the Constitution. In the past time, before amendment, members of MPR consisted of members of DPR, delegates from regions and functional groups. The procedure to elect these members was regulated by law, made by the President with the approval of DPR. There was a space for manipulation done by the President because the Constitution 1945 did not at all reaffirm that they all had to be elected through national election. In fact, only around 40 percent of the members of MPR were elected. Others were only appointed by the President. Nowadays, the Constitution, article 2 (1), reaffirms that members of MPR consist of members of DPR and members of DPD, and all of them have to be elected through national election.²⁰²

²⁰¹ Sarsito (n 190).

²⁰² Ibid.

Indrayana argues that the changes to MPR power under the constitutional amendments shows that the MPR has been able to reform and limit its power.²⁰³ The MPR, after the 1999–2002 constitutional reforms, now has limited powers, compared with before the amendments. The table below provides a comparison of MPR powers before and after the amendments, as posited by Indrayana.

Table 2-1 The MPR: Before and After the Amendments²⁰⁴

Provisions	Before the amendments	After the amendments
Sovereignty of the people	The MPR was the sole holder of the sovereignty.	The MPR is not the sole holder of sovereignty, which shall be implemented in accordance with the Constitution.
Position	The highest institution, with unlimited powers.	No longer the highest institution, nor the most powerful.
Presidential Election	The president was elected by the MPR.	The MPR only inaugurates the president and vice president, who are directly elected by the people.
The Broad Guidelines of State Policy (GBHN)	Prepared by the MPR and implemented by the president, who had to account for their implementation to the MPR.	The MPR is no longer has this authority.
Constitutional Amendments	Amended and determined by the MPR.	The MPR still have this power. However, the amendment procedures have been changed.
Presidential Impeachment	The MPR had the power to remove the President. However, the procedures were not clearly stipulated in the Constitution.	The MPR's power in presidential impeachment and its procedures are clearly stipulated in the Constitution.
Vacant Presidency	The Constitution was silent on this issue.	The MPR has the power to appoint the president or vice President, in the event that one or both positions are vacant.

²⁰³ Indrayana (n 177) 22.

²⁰⁴ Ibid.

The 1945 Constitution divided powers into executive, legislative and judicative powers, the next section further examines the role and power of each branch of power in Indonesia.

2.3 Branches of Power

Under the current 1945 Constitution (after the amendments), Indonesia has become a democratic country with limited separation of powers. The government holds executive power, legislative power lies with the parliament and judicial power with the court system.²⁰⁵ Montesquieu argues that ideally, those different branches of government should have different powers and should not intervene in the affairs of the others.²⁰⁶

However, Mahfud MD, former Chief Justice of the Indonesian Constitutional Court, posits that Montesquieu's framework is no longer relevant to modern administration.²⁰⁷ In particular, he argues that the idea of 'separation of powers' should be regarded as 'division of powers' and 'distribution of powers', since it is almost impossible to make a rigid separation between the branches of power; he believes they should be interconnected by maintaining the mechanism of checks and balances.²⁰⁸ In addition to the legislative function, Article 20 of the Constitution also provides parliament with the power to conduct budget and supervisory functions. The branches of power in Indonesia, according to its Constitution, are described in the figure below.

²⁰⁵ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

²⁰⁶ Charles de Secondat Baron de Montesquieu, *The Spirit of Laws*, ed David E Fritsche (Dynamix Worx Publications, 2005) vol 1.

²⁰⁷ M D Mohammad Mahfud, 'Separation of Powers and Independence of Constitutional Court in Indonesia' (Constitutional Court of the Republic of Indonesia), a paper presented at the *2nd Congress of the World Conference on Constitutional Justice* in Rio de Janeiro, Brazil on 16-18 January 2011 <http://www.venice.coe.int/WCCJ/Rio/Papers/INA_Mahfud_E.pdf>.

²⁰⁸ *Ibid.*

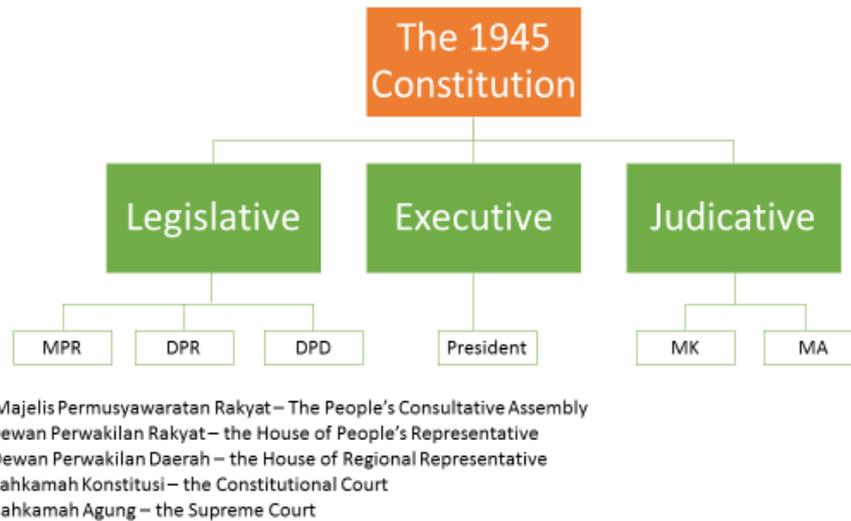


Figure 2-1 Branches of Power in Indonesia

2.3.1 Executive

Indonesia has a presidential system of government. Based on Article 4 of the 1945 Constitution, the president, assisted by the vice president, is the apex of executive power—acting as the head of state and the head of administration.²⁰⁹ The legislative power is vested in both the government and the parliament, while the judicative power is independent of the executive and legislative powers. Political reforms that took place via the four instances of constitutional amendments from 1999 to 2002 have given more power to the parliament (DPR) to implement checks and balances on the government; thus, the Indonesian administrative system has been described as ‘presidential with parliamentary characteristics’.²¹⁰ King states:

One of the primary weaknesses of the 1945 Constitution is the lack of clarity concerning one of the fundamental dimensions of any democratic system: is it presidential or parliamentary? Since the greater weight is on the presidential side, perhaps it is appropriate to call it ‘presidential with parliamentary characteristics’.²¹¹

²⁰⁹ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

²¹⁰ Blair A King, ‘Constitutional Tinkering’, *Inside Indonesia* (Edition 65: Jan-Mar 2001) <<http://www.insideindonesia.org/constitutional-tinkering>>.

²¹¹ *Ibid.*

Article 17 of the constitution stipulates that the ministers, who are appointed and dismissed by the president, assist the president in performing his duties. Each minister is responsible for a specific area of governance. The procedure of establishing, changing and dissolving a ministry is regulated by law. The president and his cabinet, along with the heads of local governments, form the executive arm of power.²¹² As the head of the executive power, the president also has the power to appoint and dismiss the heads of agencies.²¹³

2.3.2 Legislative

The House of People's Representatives (*Dewan Perwakilan Rakyat*) holds legislative power as the lower house (or the parliament), and the MPR as the upper house. Article 2 of the Constitution states that the MPR comprises the members of the DPR and DPD, who are chosen through general elections.²¹⁴ Following the 2004 election and the four constitutional amendments in 1999–2002, the MPR became a bicameral parliament, with the DPD, as regional representatives, as its second chamber. The DPD is the upper house of the MPR and the DPR is the lower house. Both the government and the DPR have the power to make laws. Each bill must be discussed between the DPR and the president (the executive) to reach a joint agreement and the President must endorse into law a bill that has reached a joint agreement. If a bill fails to reach a joint agreement, it may not be reintroduced into the DPR during the current term (Article 20).

The MPR holds the power to amend and ordain the constitution, install the president and the vice president, and to dismiss the president or vice president. The other arm of the legislative power is the DPD, which has only limited legislative power, since the Constitution only grants it advisory powers, in which it can advise the DPR on local governance and legislative matters. Article 22D of the Constitution provides that the DPD can propose a bill into the DPR for issues related to regional autonomy, central and local governments' relationship, creating a new region and matters related to the financial balance between the central and local governments. While the powers of the MPR became more limited after the 1999–2002 constitutional reforms, the era of post-

²¹² *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

²¹³ *Ibid.*

²¹⁴ *Ibid.*

amendments have witnessed a considerable increase in power for the DPR. Indrayana points out that the DPR's involvement in certain administrative matters has shown off how much power the DPR has after the amendments. Further, he posits that the DPR has shifted from a 'rubber-stamp' institution to a supreme organ of the republic, detailed in the table below.

Table 2-2 The DPR: Before and After the 1999–2002 Constitutional Reforms²¹⁵

Before	After
There was no stipulation of the DPR's legislative, budgetary and supervisory functions in the Constitution.	Stipulated
The DPR's power to do interpellation was not stipulated, nor its rights to conduct inquiries and to express an opinion to the government.	Stipulated
The DPR's approval to declare war, make peace and conclude international treaties were not required by the Constitution.	Stipulated
The Constitution did not stipulate the DPR's power to select the members of the Audit Board, and judges of the Constitutional Court.	Stipulated
The Constitution was silent on the DPR's role in the impeachment processes.	Stipulated

The DPR currently consists of 11 Commissions and 6 Committees; the 11 Commissions refer to legislative issue areas, and the 6 Committees are responsible for the DPR internal administration. Fractions in the DPR distribute commissions' leadership positions on a basis proportional to the party's seats in the parliament. The influential commissions are Commission 1 (issues of defence, foreign affairs and information), Commission 2 (home affairs and decentralisation), Commission 3 (law, human rights and security) and Commission 11 (fiscal and development planning). In addition to passing bills, the commissions are used as venues for members of parliament to express their views on issues related to their commissions' respective area, as well as their views on the performance of the executive. These commissions often hold hearings with their government representatives regarding issues relevant to their area.

²¹⁵ Indrayana (n 177) 123.

2.3.3 Judicative

The judicative power in Indonesia is exercised by the Supreme Court (*Mahkamah Agung* [MA]) and its subordinate courts and by the Constitutional Court (*Mahkamah Konstitusi* [MK]). The MA's subordinate courts are public courts, religious courts, military courts and administrative courts. Article 24 of the Constitution stipulates that, to maintain the justice system, the judicial powers of the MA and the MK are independent of other branches of powers. The 1999–2002 constitutional amendments established two new institutions in the judicative system, namely the Constitutional Court and the Judicial Commissions. Through these amendments, the Constitution gave the MK the power to conduct a judicial review of statutes—a power it avoided handing over to the MA. Indrayana argues that this was a better solution, given the acute corruption problems in the MA and existing lower courts during that time.²¹⁶

The power to conduct a judicial review of the laws is a crucial power that was not available before the constitutional amendments. Article 24C of the Amended 1945 Constitution provides the MK with the power to conduct a judicial review of legislation against the Constitution, settlement disputes regarding powers between state bodies in the Constitution, the dismissal of political parties and settlement disputes regarding the result of general elections. The MK's decision in these matters is final, which means that the MK is both the lowest and highest level of court to make such decisions.

The law binds every branch of power in Indonesia. The next section of this chapter examines the legislation framework in Indonesia. This examination provides insights into the hierarchy of legislation, as well as the nature of the law in Indonesia.

2.4 Legislation Framework

The law is a primary source of power for administrative decision-makers in Indonesia. The Indonesian legal system is based on the civil law legal system, intermixed with customary law and Roman-Dutch law. In Indonesia, the DPR, together with the president, declares the law. However, under Indonesia's legislative system, the law is

²¹⁶ Ibid.

usually general in nature, lacking in both definitions and implementation.²¹⁷ Rather, the laws work as normative declarations of will or brief guidelines.²¹⁸ Implementing regulations, in the form of government, presidential, ministerial and regional regulations or decrees, is necessary. These regulations and decrees provide further details stipulating how exactly the laws will be implemented. The executive has the power to govern how the legislation applies and is responsible for making administrative decisions under that particular law, in the form of regulations and decrees. The executive power, which consists of the president, ministers, head of agencies or government departments and public servants, are considered those who hold the administrative power.

Regarding the hierarchy of legislation framework in Indonesia, Article 7 of the *Act 12/2011 on the Formulation of Laws and Regulations* sets forth the hierarchy of the Indonesian legislation as follows:²¹⁹

- The 1945 Constitution (*Undang-Undang Dasar 1945* or UUD 1945);
- The People's Consultative Assembly Decisions (*Ketetapan Majelis Permusyawaratan Rakyat*);
- Law (*Undang-Undang* or UU) and Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang* or *Perpu*);
- Government Regulation (*Peraturan Pemerintah* or PP);
- Presidential Regulation (*Peraturan Presiden* or *Perpres*);
- Regional–Province Regulation;
- Regional–Regency/City Regulation.

As aforementioned, the laws are usually general, since they only provide statements of general principles. *Perpu* is a government regulation at the same level as the law, which substitutes certain laws and is made by the president in urgent situations, such as in times of crisis. Government regulations, or PP, were made to provide specific guidelines to implement certain laws, often drafted and discussed between ministries and signed by the president. The president, as the head of the executive power, issues

²¹⁷ Ajjoy Datta et al, 'The Political Economy of Policy-making in Indonesia' (Working Paper No 340, 2011) <<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7531.pdf>>.

²¹⁸ Ibid.

²¹⁹ *Undang-Undang 12/2011 tentang Tata Cara Pembentukan Peraturan Perundang-undangan* [Act 12/2011 on the Formulation of Laws and Regulations].

the Presidential Regulation or Perpres. The provincial or the regent/city government, in agreement with the Regional House of Representatives in their respective area, pass regional regulations.

In addition to the above hierarchy, Article 8 of the *Act 12/2011* establishes the binding authority of regulations promulgated by executive, legislative and judicial bodies that are binding as long as they have been made under the directive of higher law or regulations or made under its respective authorities. Those promulgating bodies include:

- i. The People's Consultative Assembly;
- ii. The House of People's Representative;
- iii. The Supreme Court;
- iv. The Constitutional Court;
- v. The State Audit Board;
- vi. The Judicial Commission;
- vii. The Bank of Indonesia;
- viii. Ministers, agencies, institutions or commissions established by law;
- ix. Regional Parliaments;
- x. Governors, Regents or Mayors.

In practice, there are also administrative decisions in the form of the following decrees, instruction and letters:

- Presidential Decree (*Keputusan Presiden*);
- Presidential Instructions (*Instruksi Presiden* or *Inpres*);
- Ministerial Decrees (*Keputusan Menteri* or *Kepmen*);
- Regional Government – Governor's Decrees (*Keputusan Gubernur*);
- Regional Government – Regent or Mayor's Decrees (*Keputusan Bupati/Walikota*);
- Circulation Letters (*Surat Edaran*).

Those decrees, instructions and letters sometimes conflict with each other. Ministerial and other lower decrees do not have the same binding power as regulations. However, they are binding in their respective sectors as administrative decisions. If there is a conflict between one authority in the hierarchy and a lower one, the higher authority

prevails. For example, if there is a conflict between a Ministerial Decree and a higher authority such as a Presidential Regulation, the higher Presidential Regulation will prevail. The legislation is a political product, which shapes the bureaucracy. How the government works is influenced by the political system and the legislation it produces. The next section will explore these aspects further and consider how the literature describes the influence of politics on reorganisation.

2.5 Involvement of Politics to Reorganisation and Why the Law-Making Process is a Political Process

2.5.1 Politics and Reorganisation

Administrative organisations and the political system are intercorrelated. The effectiveness of any political system is subject to the effectiveness of relevant administrative organisations. The design and control of administrative structure is a major concern for any political entity. In the literature surrounding public administration, politics and public administration are presented as separate activities. The political process produces political decisions and public officials—who are politically neutral—develop policies in line with those decisions and their underlying values.²²⁰ Political processes can have a strong influence on policy-making and can both drive and restrict reform.²²¹

The problems of bureaucracy are often structural.²²² Kettl and Fesler argue that bureaucracy and democracy have an intimate relationship.²²³ Restructuring a government organisation can imply more than a plain administrative measure, as legislation framework and political forces are controlling the shape of administrative organisations.²²⁴ To be able to identify the challenges facing governance in Indonesia, it is also important to understand the oligarchic structure of political elites.²²⁵ Mietzner

²²⁰ Bevir (n 57) 34.

²²¹ Pollitt and Bouckaert (n 23) 47.

²²² Donald F Kettl and James W Fesler, *The Politics of the Administrative Process* (CQ Press, 3rd ed, 2005) 155.

²²³ Ibid.

²²⁴ Ibid 4.

²²⁵ Marcus Mietzner, *Reinventing Asian Populism: Jokowi's Rise, Democracy, and Political Contestation in Indonesia* (Policy Studies Series, No 72, East-West Center, 2015) 1, IX, X, XI, XII, XIII, XIV, 1–61, 63–67, 69–74, 76.

postulates that attempts to establish a workable government in Indonesia are sometimes blocked by the personal interest of elites and their rent-seeking practices.²²⁶

Mietzner's in-depth study concerned post-Suharto era Indonesian leadership and events related to Indonesian political conditions, following the instalment of Joko Widodo as the Indonesian President. It also presented events related to the presidential election campaign and how Widodo obtained the presidency. However, the paper is heavily involved in the populism of Widodo and provides little examination of the real condition of the Indonesian bureaucracy. Mietzner does not adequately clarify some of the events. For example, Mietzner's states that the previous government, during Susilo Bambang Yudhoyono's presidency, rejected major attempts at administrative reform. In fact, it was during Yudhoyono's presidency that significant laws in bureaucracy reform were enacted; some of which include *the Public Services Act 25/2009*, *the Civil Servants Act 5/2014*, *the Administrative Procedures Act 30/2014*, and *the Local Governments Act 23/2014*.

In government management organisations, political values often prevail over the values of public administration.²²⁷ Caiden posits that politicians can intervene in organisational management, even in small organisational details, and use reform for their political purposes, which are sometimes irrelevant to managerial problems.²²⁸ He further argues:

Governments shuffle and reshuffle ministries, for instance, without too much (if any) concern for their organisational, administrative and managerial effects. Indeed, reorganisations like many other administrative reforms are often motivated by political considerations than by concerns with efficiency ...²²⁹

March and Olsen also argue that reorganisation is political rhetoric and a political struggle between contending interests.²³⁰ They state that 'Fundamental political interests, within the bureaucracy and outside, seek access, representation, control and policy benefits'.²³¹ Bureaucracy reform is not just a simple public management

²²⁶ Ibid.

²²⁷ Caiden (n 8) 30.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ March and Olsen (n 35) 76.

²³¹ Ibid.

exercise; more often, it reflects a shift of influence from involved political interest groups.²³² Thus, reorganisation is a political theatre, as March and Olsen state, ‘changes in administrative structure or procedures can be seen as challenging elements of the core system of meaning, belief, interpretation, status, power and alliances in politics’.²³³

March and Olsen and Caiden likewise posit that reform may succeed if it obtains implicit support from political forces.²³⁴ In contrast, Caiden describes that within every system of administration, there are individuals who can be described as ‘professional reformers’.²³⁵ Caiden describes these individuals:

These dedicated administrative reformers develop new proposals on their own and then legitimize them when they can by serving on task forces and study commissions that puzzled governments often find handy when they seek fresh ideas. They serve government as “in and outers” or the trusted “great and good” to advise, recommend, and implement reforms.²³⁶

Caiden posits that the main concern of these reformers is not power; they prefer to deal with issues related to efficiency, rationality and accountability.²³⁷ To some extent, politics can be a constraint to reform, as Caiden states, ‘Politics limits how far reforms can be taken and because politics cannot be stretched too far, reforms are compromises and invariably incremental and tentative and therefore incomplete’.²³⁸

Cruz and Keefer conclude that political actors often resist reform that reduces their popularity.²³⁹ Public leaders’ support for administrative reform is often insincere, since they are careful to conduct reform that does not threaten their power, position and popularity.²⁴⁰ Yet, it is hard to reject the idea that reform depends on the extent of

²³² Caiden (n 8).

²³³ March and Olsen (n 35) 111.

²³⁴ Caiden (n 8) 31.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Cesi Cruz and Philip Keefer, ‘Political Parties, Clientelism, and Bureaucratic Reform’ (2015) 48(14) *Comparative Political Studies* 1942.

²⁴⁰ Caiden (n 8) 3.

political support.²⁴¹ Reform also needs support from other stakeholders outside the political system and should be seen as a sustainable program, according to Caiden:

Administrative reform is or should now be seen as continuous activity, institutionalised somewhere within government, professionally staffed, given adequate resources, allowed sufficient time, and politically supported so that reformers do not just spin their wheels but make a real impact on the conduct of public business. To overcome the cost of change and inertia, administrative reform cannot be isolated; it has to involve everyone interested in public affairs ...²⁴²

Every institution in the government is subject to change, and these changes are sometimes politically driven.²⁴³ However, reform agendas are not always supported politically, particularly when the power of political actors and public leaders is threatened.²⁴⁴ In the past, bureaucracy reform has been accompanied by attempts to review and reorganise the apparatus for reform.²⁴⁵ Administrative reviews occur in a wide variety of political circumstances and involve political discussions and the investment of time and money.²⁴⁶ It appears that politics are always involved, in any reform. March and Olsen state:

Administrative reorganisations are interesting in their own right. The effectiveness of political systems depends to a substantial extent on the effectiveness of administrative institutions, and the design and control of bureaucratic structures is a central concern of any polity.²⁴⁷

The frequent theme in contemporary literature is that administrative reform is a primary agenda of politics. Therefore, collaboration between branches of powers are essential in reorganisation.²⁴⁸ March and Olsen, using the US experience as an example, argue that participants in administrative reform are those who operate in the network of 'iron triangles', which comprises congress, the president, the administrative agencies and bureaus and organised interests.²⁴⁹ According to March

²⁴¹ Cruz and Keefer (n 239).

²⁴² Caiden (n 8) 32.

²⁴³ Kim (n 110).

²⁴⁴ Cruz and Keefer (n 239).

²⁴⁵ March and Olsen (n 35) 69.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid 70.

²⁴⁹ Ibid 77.

and Olsen, reorganisation that ignores the importance of these networks of power and interests will fail, or become inconsequential.²⁵⁰ Evidently, reorganisation will succeed if all stakeholders support it politically.

In political studies, the bureaucracy is subordinate to politics and subject to political supervision.²⁵¹ While elected politicians are accountable to the public, Raadschelders and Stillman posit that civil servants are accountable to their political superior.²⁵² Bureaucrats in the civil service are policy implementers; they are responsible for translating political decisions into manageable actions.²⁵³ Raadschelders and Stillman state that they are ‘the chameleons who will serve any government, whatever its political colour’.²⁵⁴

Thus, there is a direct relationship between unelected bureaucrats, who exercise or execute policies, and public representatives (politicians).²⁵⁵ Pollitt and Bouckaert argue that ‘politics’ are not limited to certain elected politicians or political arenas, such as parliament and presidential or ministerial officers; rather, the term is defined by the processes involved.²⁵⁶ Political activity is an activity that involves the exercise of power and mobilisation of resources to achieve a set of goals that concern various parties.²⁵⁷ Despite the belief that civil servants are neutral, not partisan and not associated with any political party, they frequently engage in the political processes, in the sense that they conduct activities to enhance the chance of success for policies and programs associated with their agencies.²⁵⁸

The above findings align with those of Palombara, who argued that the bureaucracy, particularly in the upper echelons, is often deeply involved in political processes.²⁵⁹ For example, high-ranking civil servants are responsible for implementing their

²⁵⁰ Ibid.

²⁵¹ Jos C N Raadschelders and Richard J Stillman II, ‘Towards A New Conceptual Framework for Studying Administrative Authority’ (2007) 29(1) *Administrative Theory & Praxis* 4.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Kenneth J Meier, J L Polinard and Robert D Wrinkle, ‘Politics, Bureaucracy, and Farm Credit’ (1999) 59(4) *Public Administration Review* 293.

²⁵⁶ Pollitt and Bouckaert (n 23) 162.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Palombara (n 24).

minister's policies; they will negotiate with various involved parties and run programs on the minister's behalf to make the policy work.²⁶⁰ Palombara states:

Indeed, it is impossible even in the most structurally differentiated political systems to conceive of the complete separation of function that would be required were there to be an attempt to restrict the bureaucracy strictly to an instrumental role. Those who have looked closely at the public administrative systems of the Western world have long since abandoned the misleading fiction that assumed a neat, dichotomous separation between policy and administration.²⁶¹

These findings indicate that the workings of bureaucracy organisations are affected by political situations. In this sense, the bureaucracy is not politically neutral. In most democratic countries, politicians formulate the law, which is then executed by civil servants.²⁶² There is a question of whether politicians have the right to tell civil servants what to do, or not to do, including intervening in reorganisation.²⁶³ Raj suggests that the primary consideration of political intervention in government organisations should not be just the question of power, but doing what is right for public interests.²⁶⁴ Thus, politicians should be able to prioritise public interests before their political self-interest. Similarly, Hicks states that 'The politician, therefore, has to have regard for all the interests, however trivial, of his constituents and at the same time has a duty to concern himself with the affairs of the state, both great and small'.²⁶⁵

Hicks argues that having an independent civil service is important for modern societies.²⁶⁶ Politicians and civil servants should realise that they serve the people, and at the same time, they should recognise the boundaries of their power.²⁶⁷ In this regard, Wilson cautions that 'Although politics sets the task for administration, it should not be suffered to manipulate its offices'.²⁶⁸ Therefore, any reorganisation should not be manipulated by politics. While the bureaucracy must execute decisions and policy from their political leaders, they also should have the capacity to reject illegitimate

²⁶⁰ Pollitt and Bouckaert (n 23) 162.

²⁶¹ Palombara (n 24) 203.

²⁶² Charles Raj, 'Politicians vs Civil Servants', *Malaysian Business* (1 October 2006) 10.

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ H D Hicks, 'Civil Servants and Politicians: A Defense of Politicians' (1963) 6(3) *Administration Publique du Canada* 261.

²⁶⁶ *Ibid.*

²⁶⁷ Raj (n 262).

²⁶⁸ Woodrow Wilson, 'The Study of Administration' (1887) 2(2) *Political Science Quarterly* 197.

political demands and pressures through the sufficient legal framework of the civil service systems.²⁶⁹

The bureaucracy is an important agency for any government.²⁷⁰ Essentially, bureaucracy is a crucial tool of any political government.²⁷¹ As in other challenging and difficult tasks, good preparation of the tool is vital, and reform is one way of preparing the tool of governance.²⁷² In this regard, specifically in the context of Indonesia, Tjiptoherijanto explains why the bureaucracy should be reformed:

An important agency of the government is its civil service or bureaucracy. The civil service has the potential to empower a government to achieve a country's goals, that is, to improve its citizens' standard of living. The ability of a civil service to successfully support the government depends heavily on the characteristics of the civil service. In the case of Indonesia, the civil service is slow; lacks transparency, accountability, initiative; and is sometimes corrupt. Therefore Indonesia's civil service is badly in need of reform, both in relation to its institutional aspects as well as in relation to moral issues.²⁷³

Tjiptoherijanto argues that it is important for Indonesia to have a reform with a focus on institutional building and ethical conduct.²⁷⁴ To cope with the challenges of globalisation, the Indonesian government has to refine its bureaucracy by developing a modern and efficient structure.²⁷⁵ The establishment of an efficient and innovative civil service is important for any country that undertakes improvement in its public services; one way to achieve this objective is by creating a clean and efficient bureaucracy, through bureaucracy reform.²⁷⁶

²⁶⁹ David Oluropo Adeyemo and Pius Olakunle Osunyikanmi, 'Political Influence on Bureaucratic Growth and Social Responsiveness: A Case of Ondo State, Nigeria' (2009) 1(6) *Journal of Public Administration and Policy Research* 117.

²⁷⁰ Prijono Tjiptoherijanto, 'Civil Service Reform in Indonesia' in *Comparative Governance Reform in Asia: Democracy, Corruption, and Government Trust* (Emerald Group, 2008) vol 17, 39.

²⁷¹ Vera Vogelsang-Coombs and Marvin Cummins, 'Reorganizations and Reforms: Promises, Promises' (1982) 2(2) *Review of Public Personnel Administration* 21.

²⁷² *Ibid.*

²⁷³ Tjiptoherijanto (n 270).

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

Reform is a ‘top-down’ process, in the sense that it is decided by political elites and executed by civil servants.²⁷⁷ To succeed, reform must be involved in, and supported by, top to bottom administration, as Caiden states:

If those at the apex of government are not consulted or given a front role, then those below may not consider reform to be important enough to bother with. So key politicians and senior administrators must be involved, however reluctantly.²⁷⁸

In this regard, March and Olsen postulate that successful reforms may also depend on their time horizons; they are likely to achieve a higher degree of success if they are seen as sustainable processes, rather than just ‘short-term fluctuations in attention.’²⁷⁹ Hence, there is no end to reorganising and improving government organisations. In this regard, March and Olsen state:

Such reform attempts create loosely structured situations with few limitations on access, making the reform process highly sensitive to the details of the political environment. Frequently the result is a complex mixture of participants, problems, and solutions in garbage can processes. The political system seems unable to digest comprehensive reforms in one single operation, and the development of meaning becomes a more significant aspect of the reform process than the structural changes achieved.²⁸⁰

Reorganisation is a continuous activity to improve administration. However, reform and reorganisation are sometimes unpopular. As Caiden argues, most reform is intended to remove sluggish bureaucracies, tackle systemic shortcomings and failures, and change the administrative culture.²⁸¹ Those who have vested interest in the bureaucracy might be rejecting such measures as it will harm their power, popularity and other personal gains.

Bureaucracy reform requires long-term commitment and patience as government institutions were not created in a day, and they cannot be reformed in a day either. Reform is not a revolution; thus, it should not sweep away the previous progress and

²⁷⁷ Pollitt and Bouckaert (n 23) 32.

²⁷⁸ Caiden (n 8) 135.

²⁷⁹ March and Olsen (n 35) 99.

²⁸⁰ Ibid 95.

²⁸¹ Caiden (n 8) 131.

replace it with entirely new programs. March and Olson state that ‘Each new administration needs to be reminded that it can learn from its predecessors – if it takes time to – and this one probably no exception’.²⁸² Certainly, previous reform results can be continuously improved in certain, essential aspects. Similarly, Caiden suggests that a comprehensive overhaul of the administration is not always practical and is likely to be counterproductive.²⁸³

However, organisations in the public sector are not always built to accommodate easy changes and are not always open to new ideas. The status quo of self-interest among bureaucrats prevents cultural transformation in the bureaucracy. Pessimism towards new ideas means that transforming a system that already works is not easy.²⁸⁴ Still, reform should involve all levels of the organisation; not only the proponents of reform, but its key opponents should be involved. All of the relevant stakeholders should own the reform and support it along the way. There is no conclusive instruction on who should be involved in reform, but it would be beneficial if everyone who could be involved took part.²⁸⁵

Some reforms have failed, though they started very well and with novel ideas. They failed to go beyond sympathetic hearings, symbolic backing and courteous formalities because of vested interest and bureaucrats’ apathy.²⁸⁶ Although laws were changed, structures were organised and procedures were revised, some reforms did not succeed because they were barely touching the fundamental aspect of reform, the administrative culture (beliefs and values in the bureaucracy).²⁸⁷ In this regard, March and Olsen postulate that reorganisation may become a ‘garbage can’ containing ‘collections of solutions looking for problems, ideologies looking for soapboxes, pet projects looking for supporters, and people looking for jobs, reputations or entertainment’.²⁸⁸ When the reorganisation process becomes a ‘garbage can’, it may

²⁸² James G March and Johan P Olson, ‘Organizing Political Life: What Administrative Reorganization Tells Us about Government’ (1983) 77(2) *American Political Science Review* 281.

²⁸³ Caiden (n 8).

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid 151.

²⁸⁷ Ibid.

²⁸⁸ March and Olsen (n 35) 286.

go in unforeseen directions and the goals of reorganisation will likely be hard to achieve.²⁸⁹

The political process can have a strong influence on how the government works. It drives how reorganisation is conducted. Politics can influence the shape of bureaucracy, through the process of law-making. The next part of this section examines the process of law-making in Indonesia and why this process is considered political.

2.5.2 Law-Making in Indonesia: a Political Process

Legislation in Indonesia affects how reorganisation is conducted. The procedure of passing legislation depends on the initiator of the bill, which can be either the government or the DPR. Bills initiated by the government are often drafted by a task force of relevant ministries/agencies, relevant experts and academics and the Ministry of Law and Human Rights. According to the *Act 12/2011 (the Law Making Procedures Act)*, a bill should be accompanied by a *naskah akademik*. Although it uses the term *akademik* (academic), it is not necessarily a document prepared by academic scholars. Article 1 paragraph 11 of *the Law Making Procedures Act* stipulates that *naskah akademik* is a legal, research-based document that explains certain issues that need to be addressed by the proposed bill and provides justification of why the new law is needed, including the breakdown of all clauses.²⁹⁰ The task force responsible for drafting the bill prepares this document.

After the bill is finalised within the government, the president sends it to the DPR. Subsequently, the leadership of the DPR (speaker and deputy-speakers) pass the bill to the DPR's steering committee, which decides the commission responsible for overseeing its passage in parliament. The relevant DPR commission and the representative of the executive will then discuss the bill. The minister usually represents the president when attending the initial meeting; in the subsequent meeting, the minister is represented by the ministry officials. At the initial meeting, the general

²⁸⁹ Seyb (n 129).

²⁹⁰ *Undang-Undang 12/2011 tentang Tata Cara Pembentukan Peraturan Perundang-undangan* [Act 12/2011 on the Formulation of Laws and Regulations].

views of each party in that particular commission are presented, which then generates a response by the government.

A bill initiated by the DPR will undergo further steps. One or more commissions may propose a bill initiated from the DPR, which must be signed by at least ten members of parliament. The bill is then submitted to the leadership of parliament and subsequently declared as a DPR initiative in a plenary session. The leadership of parliament will then request that the president assign ministers to represent the government in the discussion of the bill. The bill is endorsed by the president and passed into law after a joint agreement has been reached between the DPR and the government.

After the end of Soeharto's presidency in 1998, Indonesia was entering the 'era of reformation' (*reformasi*). This *reformasi* period shifted the method of policy-making, which became more subject to political bargaining within a multi-party system; the policies produced in this manner tend to be political rather than technocratic.²⁹¹ During the Soeharto leadership from 1967 to 1998 (the New Order era), Indonesia had only three parties in parliament, namely the Unity for Development Party (*Partai Persatuan Pembangunan* [PPP]), the Party of Functional Groups (*Golongan Karya* [Golkar]) and the Indonesian Democratic Party (*Partai Demokrasi Indonesia* [PDI]). During the New Order period, the function of parliament was merely rubber-stamping bills proposed by the ruler.

As a result of the 1999–2002 constitutional amendments, the Indonesian parliament shifted from having limited powers, and mainly giving consent to legislation drafted by the government, to having a more powerful role in Indonesia's law-making.²⁹² Having served as a rubber-stamp parliament and the legitimating body for executive power during Soeharto's leadership, the DPR gained significant power and is now increasingly assertive in overseeing the government.²⁹³ The amendments also facilitated the direct election of the president by the people and limited the presidential term to two five-year terms for both the president and the vice president. The first presidential direct election was held in 2004. The result of the 2004 legislative and

²⁹¹ Datta et al (n 217).

²⁹² Ibid.

²⁹³ Ibid.

presidential elections resulted in the adoption of the multi-party-presidential system and the mushrooming of political parties in parliament.²⁹⁴ Currently, nine political parties have seats in the DPR.

Table 2-3 Political Parties with Seats in the DPR (Results of 2019 General Election)²⁹⁵

No.	Parties	Seats	%
1	<i>Partai Demokrasi Indonesia Perjuangan</i> (PDIP)— Indonesian Democratic Party Struggle	128	22.26
2	<i>Partai Golongan Karya</i> (Golkar)—Functional Group Party	85	14.78
3	<i>Partai Gerakan Indonesia Raya</i> (Gerindra)—Great Indonesia Movement Party	78	13.57
4	<i>Partai Nasionalis Demokrat</i> (Nasdem)—Nationalist Democrat Party	59	10.26
5	<i>Partai Kebangkitan Bangsa</i> (PKB)—National Awakening Party	58	10.26
6	<i>Partai Demokrat</i> —Democratic Party	54	9.39
7	<i>Partai Keadilan Sejahtera</i> (PKS)—Welfare Justice Party	50	8.70
8	<i>Partai Amanat Nasional</i> (PAN)—National Mandate Party	44	8.57
9	<i>Partai Persatuan Pembangunan</i> (PPP)—Unity for Development Party	19	3.30
Total		575	100%

The current largest party in the parliament, PDIP, is the party that facilitated the election of Joko Widodo as president. However, despite being the largest party in the DPR, the PDIP seat percentage in the DPR is relatively small; only 128 of 575 seats (22.26%). The small size of the president's party in the parliament means that the government must garner the support of other political parties to receive significant support from the majority of the DPR. The president and his party have to form a coalition with other political parties.

²⁹⁴ Hanan (n 182) 14.

²⁹⁵ The House of People's Representative of the Republic of Indonesia (*Dewan Perwakilan Rakyat RI*), 'Fractions in the House of People's Representative' (Web Page, 1 September 2019) <<http://www.dpr.go.id/tentang/fraksi>>.

A coalition is important for the Indonesian multi-party-presidential system. Although the executive power is not entirely dependent on the legislative power, the president still needs support from parliament to run the administration. Otherwise, the executive policy agenda may be thwarted by members of parliament, who have law-making and budgetary powers, oversight and other powers provided by the constitution. A coalition is even more important if the executive has minority support in the DPR. Hanan's argues that, because of the small size of the president's party, the president should compromise with other political parties to secure majority support in parliament.²⁹⁶

After the constitutional reforms carried out between 1999 and 2002, the DPR's power was no longer limited to giving consent to legislation drafted by the government. The power of law-making in Indonesia shifted from executive towards legislative. Before the amendments, the president, as the executive body, had stronger power to pass laws, with the agreement of a 'rubber-stamp' DPR. The President's position in the power system was dominant, despite the fact that he was the MPR's mandatory. Constitutional amendments gradually shifted the power to pass laws into to the hands of the DPR. The amended 1945 Constitution (Article 20) reaffirmed that the DPR, together with the president, should discuss bills to be endorsed and that they should be approved by both sides. The draft law concluded by the DPR and the president was then legalised by the president and entered into force. The president could never again dismiss the draft of the law that he had concurred upon with the DPR.

The DPR's other significant role is their participation in the budget process. In the past, during the New Order era, the DPR only formally approved the budget presented by the government. Now, the DPR engages in all stages of the budget process and is able to hold, stop or postpone the executive budget. In the current era, *reformasi*, members of parliament in the DPR have drafted numerous and increasing amounts of legislation, particularly in the vast area of social issues. The post-Suharto leadership era has revealed a significant increase in the DPR's power, which is sometimes regarded as too much. Datta et al. states:

²⁹⁶ Hanan (n 182) 42.

The growing assertiveness of the legislature has given way to discourse, suggesting that the parliament has become too powerful in relation to the executive branch. For instance, MPs are often seen as potential veto players, helping to water down, delay or block supposedly ‘good legislation’ drafted by executive agencies. Under the glare of the media, the general public and their political party, legislators are often seen to sacrifice constructive engagement for a more adversarial relationship with officials from the executive.²⁹⁷

Similarly, Hanan characterises the current form of Indonesian government as ‘presidentialism with a highly fragmented multiparty system’ and argues that the Indonesian parliament is now constitutionally powerful:

[T]he DPR is also fundamentally changed from a merely rubber-stamp legislature into a powerful one with clear lawmaking and check and balance power. The power of legislation constitutionally is now in the hands of the DPR. Other powers such as oversight, budget amendment, the appointment of various state commissions, and approval of various executive positions are also granted by the constitution to the DPR. There is no doubt that the Indonesian legislature is constitutionally powerful, especially in its relation to the executive.²⁹⁸

Constitutionally—after the four instances of amendments to the 1945 Constitution—the increasing power of the DPR as the legislature is not only in the making of legislation. They have also become assertive in addressing managerial issues in the government, such as performing oversight, budget making and approving the appointment of various state commissions, such as ambassadors, the chief of the national military forces, the chief of the national police, heads of certain agencies and other various, top-level executive positions. Datta et al. concludes that the Indonesian administration is overwhelmed with the increased power of the parliament and that their approach to engaging with the DPR is not ‘sufficiently sophisticated.’²⁹⁹

It is likely that, under the increasing assertiveness of the DPR, the government often has to follow the terms dictated by the DPR in regards to law-making, including those related to reform. This section has demonstrated that the process of law-making is political. Wheare argues that legislation is a product, based on political consensus and

²⁹⁷ Datta et al (n 217).

²⁹⁸ Hanan (n 182) 15.

²⁹⁹ Datta et al (n 217).

compromises³⁰⁰ and influenced by the political environment and other social and cultural contexts.³⁰¹ This section has not yet examined how legislation—as a political product—influences reorganisation. For this reason, the next section provides insights from literature into how statutes influence reorganisation and shape the bureaucracy.

Kasim argues that in Indonesia, the problem of overlapping legal rules is common and results in overlapping policies produced by executive bodies.³⁰² In this regard, Rabin posits that certain structural features in legislation are a significant factor in shaping public policies and incoherent legislations are counterproductive for the bureaucracy.³⁰³ While the focus of reform is implementing policy, laws and regulations, civil servants in Indonesia face difficulties implementing policies because of incoherent policies and legislations. The Indonesian government has to find solutions to the issue of disharmony of laws and policies that become constraints to reform.³⁰⁴ This disharmony of laws and regulations is often described as a red tape—an excessive structural constraint in the form of legal rules.

Moreover, some legislations state the establishment, nomenclatures or the authority of a large number of ministries and agencies. Altering the organisation of those ministries and agencies requires amending their relevant laws. Thus, restructuring is sometimes not merely an administrative measure. Kettl and Fesler argue that reorganisation decisions often depend more on political considerations than on administrative efficiency.³⁰⁵

Constitutionally, the president, as the apex of executive power, holds the power of the government (Article 17). Thus, the president holds the power to create and appoint ministers and heads of agencies. However, some government bodies are statutorily established; this not only makes them difficult to reform but also reduces the constitutional prerogative rights of the president. *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries] lists 46 functions of the

³⁰⁰ K C Wheare, 'Controlling Delegated Legislation: A British Experiment' (1949) 11(4) *The Journal of Politics* 748.

³⁰¹ *Ibid.*

³⁰² Kasim (n 15).

³⁰³ Robert L Rabin, 'Administrative Law in Transition: A Discipline in Search of an Organizing Principle' (1977) 72(1) *Northwestern University Law Review* 120.

³⁰⁴ Kasim (n 15).

³⁰⁵ Kettl and Fesler (n 222) 139.

government and this law also provides that the number of ministries shall not exceed 34. As nomenclatures of administrative functions are stated in the law, the president has limitations to determine and establish the nomenclature of the ministries—their names should differ significantly from the 46 functions stated in the *Act 39/2008*.

As a basis for their mandates and authorities, almost all ministries are mentioned in their sectoral legislation. As such, the president does not have the flexibility to merge or dismantle ministries. This kind of reorganisation requires a law amendment, an action that constitutionally requires another political consensus between the executive power and parliament. Ministries that are mentioned in statutes can be seen in Chapter 4.

Dissolving a ministry that is mentioned in a statute without first amending it can be a breach to the terms of that statute. It will also raise the question of how the law will be implemented under the absence of the responsible ministry. Therefore, reorganisation requires a comprehensive examination of legislation framework relevant to the structure of each organisation. Kettl and Fesler argue that a vast assortment of legal rules and political forces exercise too much control over the discretion of the administrator.³⁰⁶ In addition to ministries, the Indonesian government also has 29 non-ministerial agencies (*Lembaga Pemerintah Non-Kementerian* [LPNK]), 15 of which are statutorily established and 103 of which are independent agencies (*Lembaga Non-Struktural* [LNS]), of which 76 are established by legislations.³⁰⁷

Often, when a new law is passed to address certain issues, it also instructs the establishment of a new agency for that particular issue, despite the issue becoming the responsibility of existing ministries or agencies. This is the root of inefficiency, since it produces overlapping authorities and functions between institutions.³⁰⁸ Therefore, it is essential to have a coherent legislation framework, particularly in areas related to the institutional configuration, as more coherent legal frameworks produce more integrated policies.³⁰⁹

³⁰⁶ Ibid 4.

³⁰⁷ Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, *Pemetaan Kelembagaan Lembaga Non-Struktural* [Institutional Mapping of State Auxiliary Agencies] (2016).

³⁰⁸ Ibid.

³⁰⁹ Rabin (n 303).

Bozeman argues that legal rules are the closest relatives of red tape and may cause ‘rule entropy’—a condition where legal rules are applied differently between organisations.³¹⁰ The more organisations, levels of the organisation and authorities involved in applying a legal rule, the more likely that the meaning of the rule will be lost. Too many governing institutions may cause institutions to interpret rules differently and make inefficient use of resources.³¹¹ Moreover, the process of law-making itself is full of cross interests that result in the adoption of contradictory statutes and policies. Kettl and Fesler state:

At times, the legislative process itself is so stormy and full of crosscurrents that resulting statutes incorporate contradictory policy guidelines, leaving agency managers to use their own judgment in making sense out of the mishmash. Sometimes, too, the necessity of reaching a compromise solution leads to legislative language that papers over disagreement – but whose deliberate ambiguity leaves the agency wide scope for administrative interpretation.³¹²

Optimisation of existing functions and organisations is a key factor in establishing efficiency. Even if the existing institutions are not performing well, or do not meet the public demands, establishing a new agency with similar tasks and functions will not solve the issue, since this may lead to duplications and result in poor coordination.³¹³ Since changes in administrative organisations are often politically driven,³¹⁴ reorganisation should also have political supports from every political force, both in executive and legislative bodies.

Although the law may be changed, reform can still fail if it does not touch on the cultural aspect of reorganisation.³¹⁵ The process of reorganisation is also influenced by the legal culture of the country, particularly how the law is made. Therefore, the next section of this chapter examines the legal culture in Indonesia in its historical context. It will also explore why reorganisation needs a new legal culture.

³¹⁰ Bozeman (n 138).

³¹¹ Ibid.

³¹² Kettl and Fesler (n 222).

³¹³ Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (n 307).

³¹⁴ Kim (n 110).

³¹⁵ March and Olsen (n 35) 286.

2.6 Legal Culture in Indonesia: Historical Context

Some reforms did not succeed because they were barely touching the cultural aspect of how the bureaucracy works.³¹⁶ The statutory constraint to reorganisation shows that there is a problem in the legal culture surrounding reorganisations. Law itself is a culture—the work of an individual or the work of the society.³¹⁷ Each community has its legal system because of its particular historical evolution. Dauchy states that ‘Law, to a great extent, influences how society looks, and society determines how its law looks’.³¹⁸ The world’s two current major legal systems—civil law and common law—were born from the western legal tradition and developed in the Middle Ages. The legal system was one of the ‘export products’ of European colonisers and, along with their Western culture, it spread around the globe. It is no surprise that the Western legal traditions of both common law and civil law can be found in Latin America, Africa, Asia and Australia.³¹⁹

Continental Europe developed the civil law tradition, while common law was by the British. The former follows the framework of Roman law, sourced from the codified main principles. In the civil law tradition, the pre-established written rules play a more decisive role.³²⁰ Civil law is a codified set of rules or customs, but published law reports play a more critical role in the common law legal system. The common law tradition is a case law-based system, developed from judge-made decisional law and the doctrine of judicial precedent. This English common law is rich in Christian heritage—Zimmerman observes that the theory of Christian natural law heavily influenced common law.³²¹ As such, he argues that Christianity has always been an important element of the common law.³²² However, civil law and common law also share common features, such as the role of customary law and statutes, courts’ practices and scholars’ influence—all known and recognised by the two legal

³¹⁶ Caiden (n 8).

³¹⁷ Serge Dauchy et al, ‘General Introduction’ in Serge Dauchy et al (eds), *The Formation and Transmission of Western Legal Culture: 150 Books that Made the Law in the Age of Printing* (Springer International, 2016) 1.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Augusto Zimmermann, ‘A Law above the Law: Christian Roots of the English Common Law’ (2013) 1(1) *Glocal Conversations* 85.

³²² Ibid.

traditions. To a certain degree, Dauchy observes, legislation and other statutory rules are important sources of the law in the common law tradition.³²³

The 350 years of Dutch colonisation, before the declaration of independence on 17 August 1945, influenced the Indonesian legal system, culture and the lives of its people. Like other former Dutch colonies, Indonesia generally follows the legal system of civil law. Before the Dutch came in the late sixteenth century, indigenous kingdoms along the vast archipelago applied a system of *adat* law (customs law). There have been three strands of law applied in Indonesia, from under the Dutch reign to the present date, namely Dutch civil law, *adat* law and religious (Islamic) law. The Dutch colonial government, to some extent, allowed the *pribumi* (indigenous Indonesians) to use *adat* law for some matters, such as land acquisition and family issues. However, the Dutch were not strong supporters of legal pluralism, and did not consider *adat* law as a law.³²⁴ After its independence from the Dutch, Indonesia has been trapped in a contradicting legal system, as it attempts to introduce a foreign, Western legal tradition (civil law) into a society dominated by either cultural tradition or religion.³²⁵ Despite the attempts to preserve the unity and territorial integrity of over 17000 islands, diverse cultures and languages under one nation, one language and one flag, Indonesia faces the lingering issue of contradicting legal systems.

After Indonesia declared its independence in 1945, its legal system was born. This was a critical point in the history of the Indonesian legal system, as legal institutions, along with judiciary issues, were handed over to the sovereignty of Indonesian people. The 1945 Constitution is the basic law; any laws and regulations should be based on this constitution. The Constitution declared that any laws from the Dutch that contravene the Constitution have to be repealed. However, many laws enacted by the Dutch still apply in Indonesia, such as the Criminal Code (*Wetboek van Strafrecht* or *Kitab Undang-undang Hukum Pidana*), Civil Code (*Burgerlijk Wetboek* or *Kitab Undang-undang Hukum Perdata*) and the Commercial Code (*Wetboek van Koophandel* or *Kitab Undang-undang Hukum Dagang*). Since Independence Day, Indonesia has developed its legal system based on the principles of law and justice, with three strands

³²³ Dauchy et al (n 317).

³²⁴ Isra Saldi, Ferdi Ferdi and Tegnan Hilaire, 'Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia' (2017) 3(2) *Hasanuddin Law Review* 117.

³²⁵ *Ibid.*

of co-existing law—Dutch, *adat* and Islamic law. Along the way, some Dutch laws were supplemented by several new laws, for example, the Commercial Code is supplemented by *the Banking Act, Company Act, Intellectual Property Act, Antimonopoly Act, Trade Act, Investment Act* and more. Islamic legal principles significantly influence civil matters, such as Marriage Law, Islamic Banking Law, Inheritance Law and so forth. Some *adat* law principles, such as *musyawarah untuk mufakat* (consensus in decision-making) also appear in post-independence legislation.

As a part of the legal system, the political concept also plays a significant role in developing the Indonesian legal culture. Under the regime of the first president, Sukarno, in 1945–1965, known as *Orde Lama* (Old Order), all powers were centralised in the president’s hands. In 1945, Sukarno formulated Pancasila, the philosophical basis of Indonesia. The word Pancasila itself is derived from the Sanskrit words ‘panca’ meaning five, and ‘sila’ meaning principle—the five basic principles of Indonesians. These five principles form the core ideology of the Indonesian government and its citizens, comprising belief in God, nationalism, humanitarianism or just and civilised humanity, democracy and social justice. The establishment of Pancasila was intended to alleviate religious tensions and promote pluralism. Pancasila is a concept of constitution alike, which became the driving force of the laws. In 1967, Suharto came into power, as the second president in Indonesia’s history, and his government was known as the regime of *Orde Baru* (New Order). He was promising economic improvement but still maintaining authoritarianism, which forbade political and legal freedoms. Despite some reforms in *orde lama* and *orde baru*, the post-colonial legal system did not change significantly from the colonial era, as reflected in the similar pattern with the Dutch laws, until the reformation era in 1998. After the fall of Suharto in 1998, major reforms were made to the legal framework and democracy in Indonesia.

The long interaction between indigenous customs and the multiple religions brought to Indonesia, such as Hinduism, Buddhism, Confucianism and Islam, shaped the Indonesian culture. Then the Dutch brought the Dutch legal system and Christianity, which further complicated the legal system in Indonesia. Because of the complexity of the legal system, soon after gaining independence, Indonesia wisely chose the rule of

law instead of the rule of the majority of Islam. However, neither Sukarno nor Suharto's regimes succeeded in creating a flourishing rule of law and democracy.

After the collapse of *orde baru*, *era reformasi* conducted major reforms in the areas of decentralisation and democratisation and improved the legal system. After ruling for more than 30 years, Suharto resigned following the economic crisis and riots in May 1998. His vice president, BJ Habibie, took over and was sworn in as the third president. Habibie began the reformation by decentralising central government powers to the regional governments, bestowing greater control for provinces over their finances and releasing political prisoners that were held captive during the New Order regime. According to the old version of the 1945 Constitution, the president was appointed and received his mandate from the MPR. Habibie's presidency only lasted for 1.5 years and he failed to extend his term because of MPR disapproval. Nevertheless, Habibie successfully introduced the freedom of the press, established the first stage of the constitutional amendment that limited the presidency to a maximum of two terms of five years each, and allowed the establishment of new political parties.³²⁶

Indonesia is the world's third-largest democracy, after India and the United States of America.³²⁷ The four constitutional amendments in 1999–2002 allowed Indonesia to hold a direct presidential election in 2004, with Susilo Bambang Yudhoyono as the first president directly elected by the people. Saldi, Ferdi and Hilaire argue that these amendments opened the doors for Indonesia to enhance democracy and implement the rule of law.³²⁸ Yudhoyono served ten years, or two terms, of presidency and left office in 2014, replaced by Joko Widodo, who won the presidential election that year. Since 1998 to date, five presidents have ruled Indonesia, namely Habibie (1998–1999), Abdurrahman Wahid (1999–2001), Megawati Sukarnoputri (2001–2004), Yudhoyono (2004–2014) and Joko Widodo (2014–date). This demonstrates an improvement in democracy and freedom to vote in Indonesia after the constitutional amendments following the reformation era.

Yet, corruption remains a problem that undermines the bureaucracy. According to International Transparency, Indonesia's corruption perception index ranks 89 of 180

³²⁶ Ibid.

³²⁷ Freedom House, *Countries at the Crossroads* (Report, 2012).

³²⁸ Saldi, Ferdi and Hilaire (n 324).

countries, with a score of 38 out of 100.³²⁹ Most of the recent corruption cases occurred in the sphere of legislative bodies. In 2018, of 178 corruption cases were addressed by the *Komisi Pemberantasan Korupsi* (Commission for Eradication of Corruption [KPK]), 91 involved legislative members and 20 of those cases involved the bureaucrats of the executive.³³⁰

As many legislatures were involved in corruption, laws and policies were also contaminated with corruption. It is no surprise that bad culture in law-making has resulted in a swollen bureaucracy. Besides, the current legal culture also results in confusing laws and regulations deemed inconsistent or unsynchronised. There is no perfect legal system and legal culture. However, Saldi, Ferdi and Hilaire note that the need to minimise confusion and uncertainty of the laws is more than crucial.³³¹ They further argue that ‘Laws that contradict one another or confuse the mind of individuals are no laws at all for law is order and harmony’.³³² Legislation has been used to state the establishment and function of a particular ministry and agency. Because of this, the government became so large it became a barrier to reorganisation.³³³ Therefore, effective reorganisation needs a new legal culture, specifically in regards to how legislation relevant to government organisations is made. This is discussed further in the interview findings in subsequent chapters.

2.7 Chapter Summary

Administrative power in Indonesia derives from the 1945 Constitution. It defines Indonesia as a democratic country with a separation of powers. The executive power lies with the government, legislative power lies with parliament, and judicial power reposes in the court system. The Indonesian legal system was born after Indonesia declared its independence in 1945. The 350-year Dutch administration influenced the Indonesian legal culture. After the Constitution, the law is the primary source of

³²⁹ Transparency International, ‘Indonesia—Corruption Perception Index 2018’ <<https://www.transparency.org/country/IDN>>.

³³⁰ *Komisi Pemberantasan Korupsi* [Commission for Eradication of Corruption or KPK], *Laporan Tahunan KPK 2018* [2018 KPK Annual Report] <<https://www.kpk.go.id/images/Integrito/LaporanTahunanKPK/Laporan-Tahunan-KPK-2018-Bahasa-Inggris-Website.pdf>>.

³³¹ Saldi, Ferdi and Hilaire (n 324).

³³² *Ibid.*

³³³ Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (n 5).

administrative decision-making. The Indonesian legal system is based on a civil law system, intermixed with customary law and Roman-Dutch law. In Indonesia, the DPR, together with the President, declares the law. Law-making is a political process; it is evident from the literature examined in this chapter that the law is a political product, based on political consensus. As a part of the legal system, the political concept plays a significant role in developing the legal culture.

Reorganisation and the political system are interrelated. The workings of bureaucratic organisations are affected by the political environment. Ideally, politics should not manipulate reorganisation. Yet, restructuring a government organisation implies more than a plain, administrative measure, as legislation framework and political forces control ways of managing administrative organisations. The law-making culture has influenced the shape of the bureaucracy. Laws are in place that provide for the preservation of certain ministries or agencies in Indonesia. This chapter concluded that there is a knowledge gap regarding the extent to which political and statutory aspects shape reorganisation in the Indonesian government\ . The interviews conducted for this research will help to fill this gap.

Chapter 3: Examination of the Extent to Which Political and Legislative Aspects Shape Reorganisation in the Indonesian Government

3.1 Introduction

This chapter details the interview process taken in this study. It begins with the interview strategy and its relationship with the chosen methodological approaches. It also discusses participant selection, including participant backgrounds and criteria for selection. This is followed by descriptions of the interview question categories and some answers from interviewees. This chapter merely describes the answers provided by the interviewees. They will be analysed in subsequent chapters, for the purpose of probing the theme of this thesis. This chapter concludes with a chapter summary.

3.2 Interview Strategy

This thesis employs a qualitative approach to meet its objectives. This approach is designed to examine the political and statutory challenges involved in conducting reorganisation within the Indonesian government. Qualitative research is a process of research that uses inductive data analysis to understand the issues.³³⁴ This thesis comprises a case study that examined the process of reorganisation at the national level in Indonesia.

There were 14 interviewees interviewed in this research. This sample is relatively small. However, this research emphasises the rich insights from the participants, rather than the sample size. Paton argues that validity, significance and insight are tied to information richness, not the size of the sample.³³⁵

Face-to-face, in-depth interviews were conducted in 2017 and 2018. Interviews were held in *Bahasa Indonesia*. Qualitative analysis is interpretive. The researcher has the role of interpreting the data and it is acknowledged that the researcher cannot avoid a

³³⁴ Creswell (n 34).

³³⁵ Michael Quinn Patton, *Qualitative Research & Evaluation Methods* (Sage Publications, 3rd ed, 2002).

personal interpretation. The interview recordings were transcribed to allow the researcher to identify themes and further process the results.

All recordings were transcribed fully to comprehensively record the responses in writing and maximally capture the ideas conveyed by the participants. All the interviews were transcribed in *Bahasa Indonesia*. Then, the transcripts were translated into English. The researcher performed all of the transcribing and the translation because the transcripts contained specific terminology that professional translators may not be familiar with.

Key themes were coded for further analysis as they emerged. Open coding was used to analyse the data,³³⁶ which was based on social contexts and structures. In analysing the data, the researcher considered, for example, the participants' experiences and position in society. Specifically, the researcher examined their crucial role in influencing reorganisation in the Indonesian government, whether as a minister, bureaucrat, a member of parliament, a representative of a NGO, as an academic or in other relevant roles and positions.

Therefore, this study falls under the research theme wherein 'Qualitative Research Uses the Research Participants as Expert Informants.'³³⁷ According to Auerbach and Silverstein, this theme of research clarifies that qualitative research can study diversity without first formulating a general hypothesis.³³⁸ It does so by encouraging the researcher to step aside from the 'expert' role and uses the research participants as the experts on the issue being studied.³³⁹ This approach encourages the researcher to focus on finding answers from the people they study.³⁴⁰ The qualitative researcher recognises that participants who have direct life experience with the issue know more about it than the researcher does; that the participants, rather than the researcher, are the experts.³⁴¹ Instead of developing hypotheses, creating survey instruments or designing an experimental procedure that either accurately or inaccurately addresses the

³³⁶ See Amanda Coffey and Paul Atkinson, *Making Sense of Qualitative Data: Complementary Research Strategies* (Sage Publications, 1996).

³³⁷ See Auerbach and Silverstein (n 147) 26.

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

interviewees' experiences, the researcher can ask them directly about their insight and experience and learn from what they say.³⁴²

The next section discusses the selection of participants. Specifically, it discusses the background of the participants and criteria for selection.

3.3 Selection of Participants

All participants in this study signed the consent form and consented to be identifiable. As mentioned in the methodology section in Chapter 1, the primary data for this thesis was obtained through face-to-face and semi-structured interviews. This study interviewed 14 research participants. Despite the small size of the sample, it is still reliable, as this study emphasises obtaining the rich insights and experiences of the participants, rather than the sample size.³⁴³ Further, interviewees were selected based on their capacity to conduct and drive bureaucracy reform and reorganisation in Indonesia.

As mentioned, this study used the participants as expert informants. This approach enabled the researcher to abandon the literature stance and treat the participants as experts of their own lives.³⁴⁴ The spread of participants was chosen to avoid bias. For a balance of perspectives, participants were selected not only from those who held a position in the executive, but also from members of parliament, NGO, senior researcher for the parliament, and academia. The researcher knew some of the participants, however, the researcher remained impartial in both the questions posed and the manner in which the interviews were conducted so that an objective view of the interviewee's opinions could be obtained. Also, in order to minimise bias and subjectivity, the researcher has corroborated other sources and interviewees to ensure that the thesis reflects the correct views. The researcher interpreted what the interviewees said and then checked these interpretations with statutes and literature. The 'experts', or research participants, interviewed in this study are listed in the table below.

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ Ibid.

Table 3-1 Research Participants

No.	Name	Position/Institution	Place and Date of Interview
1.	Asman Abnur	Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia	Jakarta, 26 April 2017
2.	Rini Widyantini	Deputy Minister for the Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia– Institutional Affairs and Governance	Jakarta, 4 May 2017
3	Teguh Widjinarko	Special Adviser for Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia for the Cultural and Public Servant Performance Issues	Jakarta, 18 April 2017
4	Yanuar Ahmad	A director-level official (Assistant to Deputy Minister) at the Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, responsible for developing policies related to institutional development and governance	Jakarta, 17 April 2017
5	Vera Yuwantari	A director-level official (Assistant to Deputy Minister) at the Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, responsible for conducting institutional assessment for ministries and agencies in the area of national human capital and cultural development	Jakarta, 17 April 2017
6	Adi Budiarmo	A director-level official (Director of the Centre for Climate Change Finance and Multilateral Policy), Chief of Organisational Transformation Office, Ministry of Finance of the Republic of Indonesia	Jakarta, 5 May 2017

No.	Name	Position/Institution	Place and Date of Interview
7	Arief Wibisono	Head of International Trade Law Division, Ministry of Trade of the Republic of Indonesia	Jakarta, 25 April 2017
8	Diah Arianti	Head of Division for Religion, Education, and Technology at the Ministry of State Secretariat of the Republic of Indonesia	Jakarta, 20 April 2017
9	Bambang Supriyono	Professor of public administration and Dean of the Faculty of Public Administration at Brawijaya University, Indonesia	Malang, 21 April 2017
10	Eko Prasodjo	Professor of public administration, Dean of the Faculty of Social and Political Science at the University of Indonesia, and former Vice Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia	Jakarta, 3 May 2017
11	Abdul Kharis	A member of parliament, Chairman of Commission I of the House of Representative of the Republic of Indonesia (DPR), a politician from the Welfare Justice Party (PKS)	Solo (Surakarta), 23 January 2018
12	Ahmad Muqowam	A member of parliament, Head of Committee I of the House of Regional Representative (DPD) and former Chairman of Commission 2 of the House of Representative of the Republic of Indonesia (DPR), a politician from Unity for Development Party	Jakarta, 3 May 2017
13	Erni Murniasih	A Project Manager for KOMPAK (<i>Kolaborasi Masyarakat dan Pelayanan untuk Kesejahteraan – Public Collaboration and Services for Welfare</i>). KOMPAK is a NGO that receives funding from Australian and Indonesian Government as part of Australia – Indonesia partnership. It dealing	Jakarta, 28 April 2017

No.	Name	Position/Institution	Place and Date of Interview
		with the issues of social developments in Indonesia	
14	Riris Khatarina	Senior researcher for the Parliament or the DPR, actively engaged in assisting the MPs conducting lobbying with the executive and provide advice to the bills proposed by the DPR	Jakarta, 21 January 2018

The next section discusses the grouping of interview questions and some of the answers from the interviewees to these questions.

3.4 Grouping of Interview Questions and Some Answers

3.4.1 Themes of Interview Questions

An interview plan was made for this study to guide the researcher in asking questions to participants.³⁴⁵ Questions have been asked to the participants were quite broad and complex. There were occasions when the researcher had to ask a question outside the list of questions in the interview plan, to further explore the issue.

Key interview questions were developed, with the main focus of meeting the aim of this study. The major themes of the interview plan were developed to obtain a general idea of bureaucracy reform in Indonesia. After obtaining an overview of bureaucracy reform, interview questions were developed to identify the political and statutory challenges of reorganisation, specifically. To answer the research questions, as well as to understand the problem and to formulate solutions, interview questions were categorised into four themes:

1. Overview of bureaucracy reform in Indonesia
2. The current practice of reorganisation
3. Political and statutory challenges in reorganisation
4. Possible solutions to address the political and legal problems of reorganisation

³⁴⁵ See Appendix B: Initial Interview Plan.

The next part of this section details each theme of the interview questions. It also details interview questions according to these four groups.

3.4.2 Overview of the Bureaucracy Reform in Indonesia

This group of interview questions seeks to find answers from interviewees pertaining to the goals of bureaucracy reform, progress and achievement of reform and initial identification of major reform challenges.

a. What are the goals of bureaucracy reform in Indonesia?

Most participants in this study think that the goals of bureaucracy reform are to establish a proportional, effective, efficient and accountable government that is able to serve its citizens better. Some of their answers to this question were:

[I]nstitutional change has become the main focus of bureaucracy reform, as the reform also has the goal to create the right function, right size and proportional organisations.³⁴⁶

[W]ith the reform, we want to make government organisations as efficient as possible to execute their functions and mandates given by the president as the executive leader. With so many administrative functions, we want to make sure that all those functions can be accomplished by using organisations that able to do their tasks accountably, effectively and efficiently.³⁴⁷

[T]here are three main objectives of bureaucracy reform: first, to establish accountable and clean bureaucracy; second, to form the effective and efficient bureaucracy and third, creating a bureaucracy that is capable of delivering high-quality public services.³⁴⁸

[T]o improve efficiency, improving coordination between ministries/agencies, or internally between units in such ministry and most

³⁴⁶ Interview with Vera Yuwantari, Assistant to Deputy Minister / Director for Institutional Assessment—Human Capital and Cultural Development, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 17 April 2017).

³⁴⁷ Interview with Rini Widyantini, Deputy Minister for Administrative and Bureaucratic Reform—Institutional Affairs and Governance, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 4 May 2017).

³⁴⁸ Interview with Teguh Widjinarko, Special Advisor / Expert Staff for the Minister of Administrative and Bureaucratic Reform, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 18 April 2017).

importantly, to provide easy access for the public in obtaining services from their government.³⁴⁹

[T]he bureaucracy reform aims to improve our nation's capability, as well as to improve professionalism in our public services. Reform should be intended to bring our country to become a developed country.³⁵⁰

However, not all interviewees have a positive attitude towards the goals of reform. For instance, the former Vice Minister of Administrative Reform, who also a professor in public administration and the Dean of the Faculty of Social and Political Science at the University of Indonesia, is sceptical regarding the goal of reform in Indonesia. He expressed:

[W]e often talk about the right size and reorganisation, or maybe about 'fewer structures more functions,' performance-based structures, and so forth, but the truth, they were only political rhetoric. There was no real seriousness in designing the architecture of the government. What we have been done were only reviewing, then establishing a plan to dissolve particular non-structural agencies. We also made some evaluations to merge some directorate generals, replacing them, or elaborate them to other ministries, but we never had the grand design of the administration architecture. If I asked what the goals of bureaucracy reform are, probably there is no goal of it.³⁵¹

b. What is the extent of progress and achievement in reform?

In this subtheme, interviewees were asked their thoughts on the extent of progress and achievement in reform in the Indonesian government. Most interviewees believe that there is still a lot of work needed to achieve successful reform. Some of their answers are:

There are ten political parties in Indonesia; each of them has their agenda for this country. Their interests dominate our parliament. These can be seen in

³⁴⁹ Interview with Erni Murniasih, Project Manager, Kolaborasi Masyarakat dan Pelayanan untuk Kesejahteraan (KOMPAK) [Public Collaboration and Services for Welfare] (Mas Pungky Hendra Wijaya, Jakarta, 28 April 2017).

³⁵⁰ Interview with Ahmad Muqowam, Member of the House of Regional Representative (*Dewan Perwakilan Daerah* (DPD) or the Senates), Head of Committee I DPD (Mas Pungky Hendra Wijaya, Jakarta, 3 May 2017).

³⁵¹ Interview with Eko Prasodjo, Former Vice Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia, Professor of Public Administration, Dean of the Faculty of Social and Political Science, University of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 3 May 2017).

every hearing to discuss a bill; their vested interests are reflected in the bill being discussed. The problem is their interests are often incompatible with the government's organisational needs. That is why we have so many agencies, because their creation is embedded in the law. This is a consequence of interference by political parties through their members of parliament by using the process of law-making. It was hard to reform because of these.³⁵²

[R]eform was fragmented and partial. It was just like extinguishing the fire when there is a fire. We did something without having a comprehensive picture of it, and our assessment was fragmented and partial, all we could do was examine non-structural agencies that may not have been functioning properly. But we never discussed the main design for the organisation of the government, how many ministries we need, how many non-ministerial agencies, independent agencies. Thus, the results [of reform] were partial and did not have long-term strategic value.³⁵³

Despite the above sceptical answers, there were also some answers saying the Indonesian government had accomplished significant achievements in reform:

President Joko Widodo started his presidency by restructuring 34 ministries. This was a significant effort in reorganising the central government. The President also stated his commitment to continue reforming the government; he wants to restructure LNS [independent agencies]. In *Kemenpanrb* [MoABR], this is also our primary concern. At this stage, we have dissolved 15 LNS and [are] restructuring some LPNKs [non-ministerial agencies].³⁵⁴

There are some significant achievements [in reform]. From the institutional aspect, we have made efforts to streamline the organisation of executive bodies, including the dismissal of non-structural agencies that overlap with the functions of ministries in their respective areas. Second, the government commits not to propose a new agency through its initiated bill. The President has issued a directive for his executive bodies not to propose the establishment of a new agency when discussing a bill [with the DPR]. Third, in the area of

³⁵² Interview with Asman Abnur, Minister of Administrative Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 26 April 2017).

³⁵³ Interview with Eko Prasodjo (n 351).

³⁵⁴ Interview with Vera Yuwantari (n 346).

human resources, the landmark law of *the Civil Service Act* was passed in 2014.³⁵⁵

[T]he Ministry of Finance has two phases of reform. Specifically, for bureaucracy reform, we have achieved significant outcomes, like restructuration of our organisation, improving human resources, as well as the standard operating and procedures, these are in the first phase [of reform]. In addition, we also implemented [a] balance scorecard, reconfiguring our remuneration; those are some achievements of the first phase. The second phase was the institutional transformation. In [the] institutional transformation, we had 87 strategies for change; from these 87 initiatives, there are five main themes of institutional programs and nine trajectories for organisational changes.³⁵⁶

c. What are the major reform challenges?

This question seeks initial identification of major reform challenges. The interviewees answered that politics, legislation framework and sectoral ego are among the major reform challenges; below are some of the answers.

[B]ureaucracy reform is difficult to do because of that political interest. It is unavoidable in a democratic country like us.³⁵⁷

[T]he biggest constraint is always the law, we always create a new law for every problem.³⁵⁸

[T]he system we have produced a mindset that in a large organisation, there will be new positions, they do not think [of an] organisation as a tool to achieve our goals. Instead, it [is] only used as a tool to obtain position ...³⁵⁹

[T]here was a time when our ministry was requested to restructure the LNS (independent agencies). Since 85 of 105 LNS are statutorily established, it was not easy for us to reorganise them. This also applies to the reformation of ministries and non-ministerial agencies; it is also difficult to reorganise these bodies as many of them are protected by their sectoral legislation. As an

³⁵⁵ Interview with Teguh Widjinarko (n 348).

³⁵⁶ Interview with Adi Budiarto, Chief of Transformation Officer (CTO), Ministry of Finance of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 5 May 2017).

³⁵⁷ Interview with Asman Abnur (n 352).

³⁵⁸ Ibid.

³⁵⁹ Interview with Rini Widyantini (n 347).

example, it is hard for us to reorganise the DG Tax [Directorate General of Taxation], since *the Taxation Act* stipulates the name of the DG Tax in its provisions explicitly. We were unable either to dissolve or to upgrade the DG Tax into an agency or a ministry without amending *the Taxation Act*. As such, when we need to restructure an organisation to achieve our development goals, it may be difficult if we do not first amend the relevant statutes.³⁶⁰

Regarding the sectoral ego, a participant answered:

[T]he vested interests of politicians were often involved in how institutions were made; the main reason is to strengthen the position of their institution. It mostly happened to non-ministerial agencies, as they want recognition of their existence; as such, they endeavour to have a relevant provision in the legislations.³⁶¹

Findings from interviews related to the theme of this subsection (Overview of the Bureaucracy Reform in Indonesia) are discussed in Chapter 4. The next part of this section provides a few answers to the interview questions related to the theme ‘Current Practice of Reorganisation’.

3.4.3 Current Practice of Reorganisation

This theme explores the current practice of reorganisation in the Indonesian central government. This group of interview questions sought answers from participants on the followings aspects:

- Overview of the structure of bureaucracy in Indonesia;
- What makes an effective and efficient organisation;
- The business process between and within ministries and agencies;
- Reorganisation procedure and the process of organisational change.

Below are some insights from the research participants in answer to this group of interview questions:

a. The overview of the bureaucracy structure in Indonesia

³⁶⁰ Ibid.

³⁶¹ Interview with Teguh Widjinarko (n 348).

Some interviewees said that the bureaucracy structures in Indonesia are still too large and are also complicated by the budgeting system and coordination problem:

Still too large. We have too many personnel...handling administrative matters despite [the fact] that what we need is more staff who have specific expertise. I often call [for] our public sector to be smarter than the private sector. Some aspects of our public administration do not make sense to me. For example, we create a structure only to accommodate someone to have a top position; this is wrong. It was easy to create [a new structure], but when we want to eliminate a structure, it can be quite challenging because, in the culture of our bureaucracy, we tend to prevent someone losing his position.³⁶²

[W]e still need to readjust our structure to be aligned with our national strategic goals. Nevertheless, not all organisations have the same level of maturity; some of them tend to develop a large structure without sufficient justification.³⁶³

It is wasteful for most agencies to have a large organisation. However, in our financial system, of *the State Financial System Act 17/2007*, if they do not build a large organisation in which at least an echelon one structure [similar to directorate generals], they are not allowed to manage their budget independently. Its budget should come from their parent agency. This is a reason why agencies want to build a large structure.³⁶⁴

[E]xecutive bodies made unnecessary enlargements to their organisation so that they will be able to provide a top job for a senior civil servant.³⁶⁵

[C]oordination is an issue, and sometimes it is difficult to conduct coordination because we do not have the map of the process of our administrative institutions. Instead, we create institutions to conduct coordination; we have several coordinating ministries or coordinating

³⁶² Interview with Asman Abnur (n 352).

³⁶³ Interview with Rini Widyantini (n 347).

³⁶⁴ Interview with Vera Yuwantari (n 346).

³⁶⁵ Interview with Yanuar Ahmad, Assistant to Deputy Minister for Institutional Affairs and Governance / Director for Institutional and Governance Policy Formulation, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 17 April 2017).

agencies. As such, the way we conduct coordination has become inflexible since we see coordination as an ‘institution’ rather than a mechanism.³⁶⁶

Often, ministries are...keen to enlarge their operational elements. They are not interested in the techno-structure or the supporting elements. In a ministry, this operating element is formed as a *dirjen* [director general]. They tend to enlarge their *dirjen*, as it can utilise and manage a larger budget.³⁶⁷

b. What makes an effective and efficient organisation?

The interviews found that being effective and efficient is a crucial requirement for an ideal government. Interestingly, not all interviewees in this study see a lean structure as effective and efficient. Some of their answers include:

We do not have a formulation on the ideal number of how many ministries or agencies we should have. I personally think that we would have an ideal administration if there was no duplication and collaboration between our institutions could be done without any problems or egos.³⁶⁸

The goal of institutional reform should not merely [be] to shrink organisations and reduce agencies. Instead, it should aim to improve public services, professionalism, and administrative roles, regardless of the size of the bureaucracy. It should be fine to have a massive structure as long as it can be justified.³⁶⁹

Easy adaptation to changes is more important than being effective and efficient:

[An] [i]deal organisation is an organisation that is easy to adapt to changes. The public demands our ministry to be more dynamic and...able to control the flow of trade. This required an ideal organisation. Since the changes are fast, it will be hard if the organisation is unable to adjust.³⁷⁰

³⁶⁶ Ibid.

³⁶⁷ Interview with Vera Yuwantari (n 346).

³⁶⁸ Interview with Asman Abnur (n 352).

³⁶⁹ Interview with Ahmad Muqowam (n 350).

³⁷⁰ Interview with Arief Wibisono, Head of Foreign Trade Law Division, Ministry of Trade of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 25 April 2017).

Some of the interviewees believe that the government still needs to reduce the number of its executive bodies to establish an effective and efficient organisation:

[T]his is a big problem, I see that, instead of getting leaner, the organisational structure of our central government is getting bigger, and it is too big. We already have a decentralised government, many functions already handed over to local governments. Our central government still needs to adjust their functions based on decentralisation design.³⁷¹

We still need to streamline the government to establish an efficient government. A good linkage of activities between agencies should be established to improve the effectiveness of the government.³⁷²

c. The business process between, and within, ministries and agencies

The interviews found that coordination and duplication of function are major issues of governance. Hence, the Indonesian administration needs to improve the business processes which involve multiple ministries and agencies, as well as the processes within such ministries and agencies. Answers include:

As an example, see how we handle the issue of our rural area, to implement the Rural Laws, from its financial aspect, the formulation of the rural fund is the responsibility of the Ministry of Finance. The determination of the allocation of those funds is [the responsibility of] the Ministry of Rural Areas; its assistance facility is held by the Kemendagri [Ministry of Home Affairs]; we also had the Coordinating Ministry of Human and Culture Development as the orchestra leader of those activities. Hence, the field is too crowded. We have so many institutions working on a single issue, and sometimes we also had an institution [that] didn't do anything to solve the problems.³⁷³

[A] good linkage of activities between agencies should be established.³⁷⁴

[W]e need to develop a good business process. If the obstacle was from the law, then we need to amend that law, which is difficult. The goal of providing public services is to satisfy the public through our services in a timely and

³⁷¹ Interview with Eko Prasodjo (n 351).

³⁷² Interview with Erni Murniasih (n 349).

³⁷³ Ibid.

³⁷⁴ Ibid.

efficient manner. The public ‘should not need to deal with multiple institutions for a particular service from the government; whether they are institutions A, B or C. We still need to establish an efficient business process ...³⁷⁵

[W]e need a comprehensive refurbishment, not only for the organisation, but also related to the business processes and so forth.³⁷⁶

[I]n every hearing with the Parliament, I am sorry to say that if we accept what they want, then the new agency will be established despite [the fact] that we do not need it. We often persuade them by explaining that we already had certain ministries or agencies to handle such issues; what is more important is how we address the business processes between our existing institutions.³⁷⁷

In the institutional system, we need to regulate the institutional clusters. While in the business process, we need to establish a link and synergy between ministries and agencies, so it will not be fragmented like what we have now. When we performed a task, let’s say in the event of natural disaster, we have BASARNAS [National Search and Rescue Agency], Ministry of Social Affairs, BNPB [National Agency for Disaster Management], that is why we need a business process here, what agency will doing this and what agency will doing that.³⁷⁸

[W]e should know first the map of the processes; we do not have such map. Then, how can we examine and determine if such business process is right or wrong?³⁷⁹

d. Reorganisation procedure and process of organisational change

Interviewees believe that reorganisation should refer to the vision and mission of the president:

Every time we reorganise the structure of a ministry, we need to depart from the visions and missions of the president and our strategies to achieve them. *Kemenpanrb* [MoABR] needs to ensure the accomplishment of the

³⁷⁵ Interview with Rini Widyantini (n 347).

³⁷⁶ Interview with Vera Yuwantari (n 346).

³⁷⁷ Ibid.

³⁷⁸ Interview with Yanuar Ahmad (n 365).

³⁷⁹ Ibid.

president's goals through the development of an organisation that supports it.³⁸⁰

Reorganisation needs to be conducted based on the nation's strategic needs:

[T]he vision and mission of the government are detailed in its strategies. Organisations should be made based on our strategic needs to achieve the government's vision and mission. For example, the president expressed that we need to optimise the exploitation of our maritime resources. Hence, we created a coordinating ministry on maritime affairs. Then, other organisations are directed to optimise the exploitation of maritime resources and the establishment of 'maritime axle.' Like when we design the organisation of the ministry of trade, we design it to support our maritime goals. We also did this to other ministries, like the ministry of tourism, ministry of industries, ministry of fisheries, and so forth.³⁸¹

Reorganisation sometimes requires a law amendment and political consensus:

[I]f an organisation is statutorily established, it can be difficult to reform it, even for just a small unit of technical service delivery inside a ministry. Frequently, it was not easy for us to reorganise the 'mother' ministry of that technical unit since the name of such technical unit is mentioned in the law. Thus, without changing the law related to that unit, its 'mother' ministry cannot be reorganised.³⁸²

[A]s most ministries and agencies want to preserve their existence, they develop their sectoral legislation to achieve preservation, not only in the statute but also in the form of Presidential Regulations. That is why it is difficult to harmonise our laws and regulations. When the mandates of a ministry and its role and function are mentioned in the statute, we need the consent from the Parliament [in the form of the law amendments] to abolish or reduce the organisation of that ministry.³⁸³

[W]e had many agencies being mentioned in our laws, and now we are lost. This is because first, the function of those agencies are overlapping with the

³⁸⁰ Interview with Rini Widyantini (n 347).

³⁸¹ Ibid.

³⁸² Interview with Diah Arianti, Head of Division for Religion, Education, and Technology, Ministry of State Secretariat of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 20 April 2017).

³⁸³ Ibid.

existing ministries. Second, rapid changes sometimes require us to respond with institutional changes. Since their nomenclatures are mentioned in the laws, we first need to amend the laws to reform, and this will require a lengthy process.³⁸⁴

Above are some of the interview answers related to the theme of ‘current practice of reorganisation.’ More answers and findings related to this theme are presented and discussed further in Chapter 5. The next part of this section will present some interview answers for the group of questions with the theme ‘Political and Statutory Challenges in Reorganisation’.

3.4.4 Political and Statutory Challenges in Reorganisation

This interview theme consists of the core problems to be investigated in this study. The topics presented to the participants were:

- The current administration political will on bureaucracy reform;
- Public leader’s support for administrative reform;
- Support from both executive and legislative branch of powers to reform;
- Political motives for reform;
- Political and legislation aspects that shape the governance structure in Indonesia;
- The current legal framework for reform;
- Problems of disharmony of laws and policies.

Some of the answers given by participants for this interview theme follow.

a. The current administration political will on bureaucracy reform

Some participants think that the reform has strong support from the President:

Jokowi [President Joko Widodo] has a strong commitment to this [bureaucracy reform]. He is firm that he wants to make changes to our bureaucracy. If only it is possible, we want to make a total reform.³⁸⁵

³⁸⁴ Interview with Teguh Widjinarko (n 348).

³⁸⁵ Interview with Asman Abnur (n 352).

[T]he President, in a meeting with echelon two officials across ministries and agencies, gave a directive not to create a new agency in a bill that is prepared by the government. He instructs his administration not to formulate a provision which includes the creation of a new institution. He thought that the existing ministries and agencies already cover all functions [that] need to be performed by the government.³⁸⁶

Nonetheless, if there is no existing ministry or agency for the issue on the table, it is much better to have existing ministry or agency that has the responsibility in the area that is close with the issue ... handle the problem.³⁸⁷

Our President has a strong commitment to this issue. He really wants us to do efficiency. For this purpose, every month there is a progress report from the Ministry of Administrative Reform to the President on the progress of reform.³⁸⁸

An interviewee answers that the political will should start from the highest position of administration:

Political will should be started from the leadership [of administration].³⁸⁹

However, there are also critics of the commitment of both the government and parliament regarding their political will to reform:

Political will, the truth is, it was just jargon, and the Commission 2 of the DPR says that we need to re-evaluate our government bodies, to either merge or dissolve them, or to preserve what we need. However, the fact is, almost all the bills initiated by the DPR were intended to create new agencies. While, in the government, even [when] we have a directive from the President, not all ministries fully comply with the President's directive ...³⁹⁰

[P]erhaps we [the government] should communicate effectively with the DPR. I do not think that all of our members of parliament have sufficient legal or constitutional law backgrounds. It is a bit difficult for us to argue with the

³⁸⁶ Interview with Teguh Widjinarko (n 348).

³⁸⁷ Ibid.

³⁸⁸ Interview with Vera Yuwantari (n 346).

³⁸⁹ Interview with Bambang Supriyono, Professor of Public Administration, Dean of the Faculty of Administration, Brawijaya University, Indonesia (Mas Pungky Hendra Wijaya, Malang, 21 April 2017).

³⁹⁰ Interview with Diah Arianti (n 382).

DPR (that new agency is not needed). The government needs to address [the] DPR effectively. At least, we need to obtain a commitment from the leadership of the DPR to not propose a new agency.³⁹¹

A member of parliament criticises the government's commitment to reform:

I do not see [that] they have such commitment; sometimes it [the reform] [is] just a procedure. Meaning that bureaucracy reform in Indonesia is merely to fulfil what the President wants, not as an effective measure to improve the function of our public services.³⁹²

Another interviewee answered similarly:

Political will, from time to time, is not changing. The intention to develop a coherent structure at the national level of government is just a commodity of political campaign and political rhetoric. We have not made this [political will] ... an integral commitment ... actualised in a roadmap document that has the purpose of streamlining the government. The multi-party system heavily influences this situation. The reform was not integrated and [was] rather fragmented, and so is the business process and governance between executive bodies.³⁹³

b. Public leader's support for administrative reform

Reform still lacks support from public leaders and their support for administrative reform is based on their personal interest:

[T]he extent of support is sometimes only based on their personal interest. Some agencies' leader wants their institution to remain in existence and to reject any future idea for its liquidation. In reality, any agency should be a part of a bigger strategy for change and improvement to our bureaucracy ...³⁹⁴

[F]irst, from leadership, they said they support bureaucracy reform. However, mostly, it was just lip service or only on paper, without real implementation. It is only in a document, to show that bureaucracy reform is one of the programs, to show the public they have made a LAKIP [an annual accountability report]. Sadly, our public leaders and political elites are not

³⁹¹ Ibid.

³⁹² Interview with Ahmad Muqowam (n 350).

³⁹³ Interview with Eko Prasodjo (n 351).

³⁹⁴ Interview with Yanuar Ahmad (n 365).

fully aware of the essence of bureaucracy reform. It is shown from the policies produced by the government. It is even worse in local governments; most policies are heavily influenced by ... motives for ... political and personal gain, because they do not understand the essence [of reform].³⁹⁵

I am in doubt that the theme of bureaucracy reform is an important theme for our government. The administrative reform is written as one of our *nawacita* [nine development goals]. However, I see that the government does not have a sufficient commitment to achieving it. It is unclear how we should do the institutional reform.³⁹⁶

c. Support from both executive and legislative branch of powers to reform

Reform requires a stronger and same level commitment from both the executive and legislative powers:

[T]he legislative and executive should have the same frequency; both should [be] aware [that] organisations are created as an engine for the government ...³⁹⁷

[W]ithout support from our legislators, either from legislative or executive, it is difficult [to reform].³⁹⁸

I think commitment is of the utmost important between the legislative and the executive. The advantage of legislation-making is in the legislative, if the executive disagrees, there are ways to make it pass, so the highest commitment I think should be from the legislative. We do not need to create a new institution in every new law. ... we need to assess which existing institution ... is responsible for that issue.³⁹⁹

Not all commissions in the DPR support the reform:

Our counterpart commission in the DPR—the Second Commission, support (reform) very well, but with other commissions in the parliament, we struggle to have their support, this is not easy.⁴⁰⁰

³⁹⁵ Interview with Erni Murniasih (n 349).

³⁹⁶ Interview with Eko Prasodjo (n 351).

³⁹⁷ Interview with Rini Widyantini (n 347).

³⁹⁸ Ibid.

³⁹⁹ Interview with Diah Arianti (n 382).

⁴⁰⁰ Interview with Rini Widyantini (n 347).

A member of parliament suggested that the strongest support should instead come from the executive:

If the government wants to be efficient, reform should be started by the government. For us in the DPR, when ... the government creates a new agency, it means that there is a new, specific problem that needs to be taken care of by the government, using a specific new agency. This new agency is not necessarily given a large organisation. I think inefficiency is everywhere. If the government wants to have an instrument to determine whether an institution is being efficient or not, it is up to the government to develop this. The thing is, the government itself should support efficiency measures.⁴⁰¹

The legislative's support for reform may also depend on whether the government can persuade the DPR:

I can see that our legislatures' support, if we can persuade them for the right reason, they can accept [not to propose a new agency in their bill]. As an example, in the bill of Cultural Law, the DPR wanted a new agency to address our cultural heritage issues, but we told them that, at this time, we already have 18 ministries and agencies sharing the work to handle such issues. They agreed that this issue is handled by our existing bodies.⁴⁰²

It seems to me that our colleagues that are dealing with drafting the law need to be convinced by the government that a new agency is unnecessary.⁴⁰³

d. Political motives for reform

Institutional reform can drive other areas of reform:

The institution is the locomotive of change. If we have good policies on how to manage institutions, improvement to other areas—such as human resources and budgeting—will follow.⁴⁰⁴

Reform is constrained by the oligarchic structure of political parties, political motive and vested interests:

⁴⁰¹ Interview with Abdul Kharis, Member of Parliament, Chairman of Commission I of the House of Representative (DPR) (Mas Pungky Hendra Wijaya, Solo, 23 January 2018).

⁴⁰² Interview with Vera Yuwantari (n 346).

⁴⁰³ Interview with Ahmad Muqowam (n 350).

⁴⁰⁴ Interview with Rini Widyantini (n 347).

The members of parliament are a representation of the interest of political parties and their elites. The influence of party leaders to their respective members who serve in the parliament shapes the product of our parliament.⁴⁰⁵

The DPR's power is dominant in deciding the appointment of the leader of top agencies; the government can only propose the candidates [to DPR]. It is the DPR who decide who will obtain the position, like in the Supreme Audit Council. Certainly, there is a certain motive and interest in this process.⁴⁰⁶

[M]aybe ... interests with political motives make political elites keen to have an individual affiliated to them ... obtain a top job in the government. Instead of [being] created to solve problems, organisations were created to accommodate this interest.⁴⁰⁷

Everyone is playing politics; this is why the legislative and the executive need [to be] in the same boat, no more speaking on behalf of the party. Some interests of the party can be unavoidable, but these should be framed for the greater good of this republic.⁴⁰⁸

For instance, they [the DPR] threaten to amend the Civil Service Law, and use it as their bargaining power, if the Civil Service Commissions [one of the LNS] is dissolved. Therefore, in my opinion, instead of supporting the reform, they broke their own commitment to reform.⁴⁰⁹

As long as the President has a strong political commitment, it should not be a problem, the administrative power held by the President, he has a big privilege to determine the number of ministries, as well as non-ministerial agencies. I know there will be resistance to reform, and we cannot avoid that. There is also a measure to accommodate the interests of a particular political party in our organisational design. These should be able to be addressed with a strong political commitment and the clarity of the design of the organisational structure to achieve our development goals as a whole. So we need to comprehensively see that we need to design our government organisation to improve productivity and efficiency.⁴¹⁰

⁴⁰⁵ Interview with Asman Abnur (n 352).

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

⁴⁰⁸ Interview with Rini Widyantini (n 347).

⁴⁰⁹ Interview with Erni Murniasih (n 349).

⁴¹⁰ Interview with Eko Prasodjo (n 351).

There are two sides of political motives to reform, and the managerial and operational elements of the bureaucracy should be independent of politics:

From the negative side of politics, reform is driven by rent-seeking practices and transactional politics and opportunist people play a significant role in here. The process of top-echelon appointment and budget planning are among the examples. On the other hand, from its positive side, if reorganisation is designed to improve effectiveness and efficiency, we will be able to install the best people for the job. However, I still did not see that we [were] already there. Money, politics and other forms of corruption still influence reform.⁴¹¹

[W]e sometimes have no choice but to think of how we combine the interests of the government with the interests of so many parties to the maximum extent possible to benefit the public.⁴¹²

There is a big difference between the term ‘administration’ and the term ‘management.’ The former is more general, while the latter is a more specific area. Administration tends to be discussed in qualitative while management is more quantitative. From the aspect of administration, we need to fix the political influence of our bureaucracy. The managerial aspect of bureaucracy is a specific problem. The bureaucracy itself has elements that consist of policy, managerial and operational. Whenever possible, politics should not intervene with the managerial and operational elements of the bureaucracy.⁴¹³

e. Political and legislation aspects that shape the governance structure in Indonesia

Answers regarding the political aspects that shape governance structure included:

[W]e created organisations without placing first a load of works that needs to be done. The loads should come first. It can be derived from the focuses of our country, and these should be prioritised. We need to see the vision and mission of our president to understand what needs to be achieved, then priorities can be arranged. ... we have a number of ministries that we do not need, but again, there are political interests here, so we create a new

⁴¹¹ Interview with Erni Murniasih (n 349).

⁴¹² Interview with Asman Abnur (n 352).

⁴¹³ Interview with Bambang Supriyono (n 389).

organisation here, whether it was ministry A or B. I do not need to mention the name of such ministries specifically.⁴¹⁴

The government is weak in negotiating [with the DPR], maybe because of some executive leaders are also from a political party. If the president is from the PDIP (a political party) and PDIP also dominates the DPR, it can be easy for them to tell the president: 'You become a president because of us, so he lose' ...⁴¹⁵

We are struggling to prevent the creation of new institutions through the process of law-making. Some institutions also tend to preserve and increase power. Sometimes, I saw that our bureaucrats were working based on fear, like afraid of losing their position, without thinking about the interest of the republic. We try to stop this by returning to the mindset that the president holds a prerogative power to decide [the creation of a new agency], so it is the president to decide whether we need a new agency or not. The president, as the head of administration and the head of state, should have the flexibility to manage his apparatus. Secondly, we intensify our communications with all commissions of the parliament. However, the hearing process in the parliament is divided into sectors, with each commission handling different sectors; sadly, there is no linkage between activities across the commissions. Thus, when the Second Commission of the DPR was already in the same boat with us for not creating a new agency from a new law, other commissions are still doing this. So, I think, in our institutional reform, there is a significant political issue in it, and both the government and the legislative should sit together to solve this issue.⁴¹⁶

[T]here was an anxiety of our top-leaders on this and sometimes they disagreed with the reform initiative, they afraid some officials might lose their positions.⁴¹⁷

Regarding the legislation aspect, interviewees said:

Laws and regulations form many organisations; these could be done by an Act, PP [Government Regulation], or a Presidential Decree. There is no

⁴¹⁴ Interview with Asman Abnur (n 352).

⁴¹⁵ Ibid.

⁴¹⁶ Interview with Rini Widyantini (n 347).

⁴¹⁷ Interview with Adi Budiarmo (n 356).

instrument to filter the proposal to create a new agency. Moreover, our laws and regulations are fragmented because each sector wants their organisation to be independent, secure from any liquidation. If we want to reform our institutions, we also need to address our legislation. The successful key of our bureaucracy reform is also to reform our laws and regulations because these (laws and regulations) are what makes us have so many ministries, UPT (technical service delivery units), non-structural agencies, and so forth. These bodies are well-preserved in Indonesia because of legislation.⁴¹⁸

[O]ur agencies requested to be mentioned in the law because it will make their existence and position stronger, despite [the fact] that, in our system, it is already sufficient to create an executive body by a presidential regulation. Certainly, there is an interest in doing this. The main reason is that it will be difficult to reorganise them because changing the laws compared to changing a presidential regulation is more difficult, so many steps to do for amending the law.⁴¹⁹

There was a time when the President wanted to dissolve some ministries and agencies. It took years because we do not have a grand design for our administrative structure. There was no guidance on how we should streamline the administration. When we streamline our organisations, change management should be in place, and there are a few things to consider, such as what to do with the people of such organisations. How we handle our human resources is a sensitive issue; losing an institution can cause a traumatic experience as it may cause some people to lose their position. To prevent losing their position, they make efforts to prevent their institution from being reorganised and strengthen the power of their institution at the same time. Essentially, a function can be shared with other institutions. However, some people in our administration are greedy. To strengthen the existence of their institution, they do not want other institutions to share the role. Instead, they tried to make their institution to be mentioned in the statutes. Since the law is the second strongest legislation after the constitution, this will make them stronger. Last, because of certain motives of the political elites, like the need to have someone as a “puppet” in the administration.

⁴¹⁸ Interview with Eko Prasodjo (n 351).

⁴¹⁹ Interview with Diah Arianti (n 382).

Ultimately, organisations were not created to solve problems. Instead, it will lead to other problems in our governance.⁴²⁰

[W]ith the increasing demand from the members of parliament, as well as from the new sectors of development in Indonesia, to create new institutions, new councils, new commissions, etc., they often use the laws to establish such institutions. On the other hand, the government is also doing the same, by using presidential regulations or government regulations in cabinet meetings. Thus, the organisation has become swollen because of so many pragmatic interests. We often try to solve problems by creating a new organisation structure.⁴²¹

f. The current legal framework for reform

Participants believe that laws and regulations curb the bureaucracy:

Today, I met with the head of *Basarnas* [National Search and Rescue Agency]; I tested him and asked what the job of his agency is. He replied that the job of his agency is to conduct search and rescue. I was then asked whether *Basarnas* had a program for the prevention of any incident. He said then that the laws and regulations related to *Basarnas* do not mandate them to do that. It shows that when we perform our duties, it always overshadowed by legal rules. Things like this are curbing our bureaucracy.⁴²²

The current legislative framework of reform does not support the reform. The legislation is in disharmony because of sectoral ego that exists amongst institutions, resulting in overlap and duplication:

[W]ith the OJK [Financial Service Authority] and BI [Bank of Indonesia] for example, it was not easy to approach them. OJK has regulations addressing the provision of an LPI [import guarantee], but we in the Ministry of Finance also have regulations addressing the same issues. There is a disharmony between our regulations and theirs. We are of the opinion that this is our area of work, and it is our responsibility to regulate this area, but they are also thinking the same.⁴²³

⁴²⁰ Interview with Rini Widyantini (n 347).

⁴²¹ Interview with Eko Prasodjo (n 351).

⁴²² Interview with Asman Abnur (n 352).

⁴²³ Interview with Adi Budiarmo (n 356).

[A]s an example, between BKPM [the Drug and Food Safety Agency] and the Ministry of Health, they are working on the same area and each of them has their sectoral laws or regulations. The other example is between BNP2TKI [the National Agency for the Protection of Indonesian Migrant Workers] and the Ministry of Manpower. These bodies are sharing work in the same area; there should be no issue as long as a good business process between them is in place. Therefore, when the President instructs us to protect our workers overseas, we need to focus on the issue and execute the required tasks effectively. To do this, it should be clear who the responsible agency for this issue is. As for now, it seems like every institution, especially non-ministerial agencies, claim they are more responsible. They forget that, according to article 17 of the Constitution, all administrative roles are to be executed by ministries as the helper of the president. Ideally, we need to integrate the function of non-ministerial agencies to the ministries. However, it seems impossible, as we need to change many laws to do this.⁴²⁴

I think our laws and regulations do not support [the reform]; each of them is still talking in the eye of their sector. The sectoral ego in our public organisations is still high. We cannot rely on existing laws for doing the reform. We need to change this in our future legislation. It does not mean we should not allow the creation of a new agency. However, it should be noted that (according to the Constitution), the creation of a new agency should only [be] decided by the President. In my opinion, by including terms which decide the creation of a new agency in statutes could mean that the intervention of the legislative branch of power into the executive is still significant.⁴²⁵

Even if the law is passed after the DPR and the president have concluded to agree for a bill to become law, this is still not good for the flexibility, for the movement of his organisations. Therefore, it would be better if the law were only focused on building the systems, goals and philosophies for organisational management of our bureaucracy. We need to give the flexibility to the President [to reorganise]; the public already voted [for] him to do this anyway. Because legislation trapped our institutions, the President implies that we are going nowhere when the discussion on the institutional issue is on the table. The institutional reform is a central issue; when we

⁴²⁴ Interview with Rini Widyantini (n 347).

⁴²⁵ Ibid.

discuss why our public services are poor, it will be related to how the institutions are.⁴²⁶

The major challenge of reform is the culture of sectoral ego. Since the beginning of the reformation era [1998—the year when Soeharto resigned from power], each ministry and agency tried to pass their own legislation which mentioned the nomenclature of its own institution. This has happened because the leadership of these institutions is afraid their institutions will no longer exist because of being reformed. They formulate the laws to give protection to their agency. Since then, we have so many ministries and agencies that are mentioned in statutes. This will make it hard for us to make rapid changes to our organisations.⁴²⁷

The findings of this theme—the Political and Statutory challenges in Reorganisation—are discussed in Chapter 6. The next subsection provides a few answers from the interviewees to the questions related to the theme ‘Possible Solutions to address the Political and Legal Problems of Reorganisation’.

3.4.5 Possible Solutions to Address the Political and Legal Problems of Reorganisation

Some interviewees indicated that the political and legal problems surrounding reorganisation are related to the culture of law-making and that addressing these problems requires a mutual understanding and mutual commitment to reform between the executive and legislative:

[W]e need to have a strong power to do this (negotiating the terms of the bill with DPR) ...⁴²⁸

[T]he executive and the legislative should have the same frequency (the same commitment and same understanding to reform) ...⁴²⁹

⁴²⁶ Ibid.

⁴²⁷ Interview with Teguh Widjinarko (n 348).

⁴²⁸ Interview with Asman Abnur (n 352).

⁴²⁹ Ibid.

[T]here should be the same frequency between the legislative and executive; both should be aware that organisation is made as an engine for the government, not just to address a certain issue for a particular time.⁴³⁰

I think commitment is the most important, between the legislative and the executive. The advantage of legislation-making powers belonging to the legislative is that if the executive disagrees, there are still ways to make it pass ...⁴³¹

Interviewees agree that there is a need for new legislation to address the political and statutory challenges of reorganisation. Not only to serve the purpose of addressing the political and legislation challenges, but this new legislative framework is also needed to change the legal culture of reorganisation. Some of the answers related to this include:

I think we need a new law that serves as an umbrella and a legal basis for so many administrative functions of the government. This new law should describe functions that need to be addressed by the central government. In the future, statutes should not specify the nomenclature of a responsible body for a particular function; let the president decide whether we need a ministry or something else to address it.⁴³²

I hope that we have a new law that comprehensively regulates all institutional aspects we need to cover. I cannot describe the detail of the major clauses of this new law, but I hope that at least it contains guidance for the justification of the urgency of a new ministry or agency. For us, this law will be like a tool book, like if we want to repair a car—we need a manual. It should apply until the smallest unit of organisation, probably like defining what a bureau is, what is techno-structure and how to develop institutions that conform to our budgeting system.⁴³³

We need a set of legal rules that provide criteria for the urgency of creating a new agency clearer. It help us to assess whether the issue is already addressed by the existing institutions or not; then, if it turns out that we need a new agency, it also helps us to decide the classification of a new body that we need.⁴³⁴

⁴³⁰ Interview with Rini Widyantini (n 347).

⁴³¹ Interview with Diah Arianti (n 382).

⁴³² Interview with Rini Widyantini (n 347).

⁴³³ Ibid.

⁴³⁴ Interview with Diah Arianti (n 382).

Yes, we need [a new law to support reform], so our guide is not only a letter from the secretary of the cabinet that conveys directives of the president. The parliament has the power to formulate the laws, but the government also has this power. In the process of law-making, the parliament might argue that we need to establish a new agency through the bill that was discussed; the government then might say no in that hearing, then I assume the parliament can reply ... saying “constitutionally, we have the power to formulate the provisions to establish a new agency”. This kind of debate is unnecessary as the government also has the power to say no. Thereby, both the legislative and the government should have the same commitment and awareness that we are currently reforming our bureaucracy; we are struggling to make our bodies more efficient and effective; we do not want to spend a lot of our budget to maintain our vast organisations.⁴³⁵

I can see we need legislation which governs our national government’s institutional problems. But to have this law, we need a consensus between our government and parliament, and this will require political processes. We cannot ignore that political influence will always influence reform. We probably need a statute similar to the Regional Governments Law that governs the institutional problems only for the provincial and local governments. For the central government, we do not have that kind of legislation, which [is] able to guide our organisational issue. For the central government, currently, we only have general provisions from Article 17 of the 1945 Constitution, which says little about ministries, the organisation of the ministries, and their institutional aspects.⁴³⁶

Indeed, we need such legal rule to regulate the organisation of executive bodies. This is important to guide us in deciding the type of agency for a particular issue. Currently, we do not have criteria to determine the type of organisation we need.⁴³⁷

Findings related to the interview questions theme of this subsection are discussed in Chapter 7. The next section provides the overall summary of this chapter.

3.5 Chapter Summary

This chapter has detailed the interview processes for this thesis. It has further discussed the strategies for the interviews and their relation to the method chosen for this study,

⁴³⁵ Interview with Teguh Widjinarko (n 348).

⁴³⁶ Interview with Eko Prasodjo (n 351).

⁴³⁷ Interview with Yanuar Ahmad (n 365).

as well as the criteria for the selection of interviewees. It also discussed the grouping of interview questions and presented some answers given by interviewees. However, these interview answers are not analysed and discussed further here. These answers are discussed and analysed in the subsequent chapters. The remaining chapters of this thesis are based on the grouping of interview questions.

Chapter 4: Overview of the Bureaucracy Reform in Indonesia

4.1 Introduction

The direction and future of bureaucratic reform in Indonesia depend on the ability of the government to establish reform goals that are able to tackle any bureaucratic problem. Strategic reform involves the development of goals that unify political leaders, bureaucrats and other stakeholders. In doing the reform, the government needs to have support from other centres of power, such as the parliament, political parties and the public. Collaboration between these actors to identify priorities for the reform is critical.

Deciding the reform path necessitates the capability to anticipate public needs. However, most reforms are not developed in anticipation of needs, but rather in response to crises that arise when those needs are unmet.⁴³⁸ The challenge for the government is to move away from opportunistic reform to strategic reform—and it is daunting. Establishing strategic reform involves developing a clear vision of the goals of reform at large.⁴³⁹ This chapter outlines bureaucratic reform in Indonesia. It begins with an examination of the goals of bureaucratic reform, followed by a discussion on the progress and achievement of reform. Then, this chapter identifies the major reform challenges and the legal culture of reform. A summary concludes this chapter.

4.2 The Goals of Bureaucratic Reform in Indonesia

In the literature surrounding public administration, being ‘efficient’ and ‘effective’ are two crucial factors for the ideal organisation. Simeone defined ‘efficiency’ as ‘the use of resources in such way as to minimize waste and to ensure resources are put to their most valuable use’ and ‘effectivity’ as ‘the use of resources to accomplish what you set out to accomplish’.⁴⁴⁰ The economy, along with the principles of effectivity and

⁴³⁸ Organisation for Economic Co-operation and Development, *Government of the Future* (OECD Publishing, 2001) 12.

⁴³⁹ Interview with Eko Prasodjo (n 351).

⁴⁴⁰ Ann Elizabeth Simeone, ‘The Ideal of Public Service: The Reality of the Rhetoric’ (PhD Thesis, Virginia Polytechnic Institute and State University, 2004) 69 <<https://search-proquest-com.dbgw.lis.curtin.edu.au/docview/305105916?accountid=10382>>.

efficiency, has become the guiding principle on the operations of modern government.⁴⁴¹ Increased pressure on the government to be as efficient, effective and economical as the private sector show this.⁴⁴²

To some extent, the Indonesian style of reform was influenced by those of European countries,⁴⁴³ mostly by the ideas of New Public Management (NPM). It is not surprising that some of NPM's jargon, such as 'effectivity' and 'efficiency', was prevalent in Indonesian reform campaign documents. The NPM-driven reforms were oriented both to reduce the cost of the public sector and to increase the quality of public services.⁴⁴⁴ The expected result is to establish a better quality government with less public expenditure. The logic behind NPM is that the public sector should run in a way similar to the private sector. It is adopted to improve the famous '3 Es', economy, efficiency and effectiveness.

The public wants its government to be more efficient, while at the same time able to deliver services in an egalitarian manner, like businesses.⁴⁴⁵ Most participants in this study agreed that creating an effective and efficient bureaucracy that is able to provide better services to the public is the essential goal of bureaucracy reform. Hence, reforming the bureaucracy in Indonesia should aim to create a proportional bureaucracy that has the right size and the right function to serve its citizens better.⁴⁴⁶

Through effective reform, the government can ensure that it can perform all of its functions, supported by organisations that are able to deliver their tasks accountably, effectively and efficiently. Interview answers show that there are three main goals of bureaucracy reform, namely, to establish an accountable and clean government, to form effective and efficient bureaucracy and to improve the quality of public services (see interview answers in Chapter 3). These goals are aligned with the goal of reform posited by Pollit and Bouckaert, that reform has the objective of getting the

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Interview with Bambang Supriyono (n 389).

⁴⁴⁴ See Alistair Cole and Jean-Michel Eymeri-Douzans, 'Introduction: Administrative Reforms and Mergers in Europe: Research Questions and Empirical Challenges' (2010) 76(3) *International Review of Administrative Sciences* 395.

⁴⁴⁵ Simeone (n 440) 67.

⁴⁴⁶ Interview with Vera Yuwantari (n 346); Interview with Rini Widyantini (n 347).

government (in some sense) to run better.⁴⁴⁷ However, some interviewees in this study were sceptical about seeing Indonesia reach its reform goals. Prasodjo answered:

Q (question): From your perspective, Professor, what are the goals of bureaucratic reform, particularly in institutional reform?

A (answer): Yes, the truth is there is no specific design for our institutions, we often talk about the right size and reorganisation, or maybe about ‘fewer structures more functions,’ performance-based structures, and so forth, but the truth, they were only political rhetoric. There was no real seriousness in designing the architecture of the government. What we have been done were only reviewing, then establishing a plan to dissolve particular non-structural agencies. We also made some evaluations to merge some directorate generals, replacing them, or elaborate them to other ministries, but we never had the grand design of the administration architecture. If I asked what the goals of bureaucracy reform are, probably there is no goal of it.⁴⁴⁸

For Prasodjo, the reform agenda is merely political rhetoric; he does not see the real goal of reform as the government is not fully committed to reform itself. Arianti also thinks that the government is inconsistent in conducting reform:

Q: What are the goals (of institutional reform), what progress has been made towards them’?

A: A bit difficult to describe [the goals and progress], what is interesting to me is that yesterday the DPR raised a question of why the government persuaded them not to create a new agency (under the terms of legislation), while at the same time the government is also actively bloating itself. For example, the government recently created a new agency to manage our peatlands. It also created a new body for the implementation of *Pancasila*. Our president recently issued a directive to his administration, suggesting that terms enabling the creation of new agencies not be included in legislation. However, some top administrators did not comply with this directive and thought that it was just a suggestion; this has become a polemic.⁴⁴⁹

⁴⁴⁷ Pollitt and Bouckaert (n 23).

⁴⁴⁸ Interview with Eko Prasodjo (n 351).

⁴⁴⁹ Interview with Diah Arianti (n 382).

For a government that has limited resources and budget constraints, achieving efficiency is crucial.⁴⁵⁰ Across most of the globe, governments are massive organisations with many layers and structural formations, resulting in massive bureaucratisation.⁴⁵¹ The bureaucracy has become fragmented and less consolidated, as the relationship between the elements of bureaucracy become more complex.⁴⁵² This is why a lean government is often seen as ideal. There are growing trends of de-bureaucratisation in pursuit of efficiency. However, focusing too much on efficiency perhaps will make other important aspects, such as flexibility and responsiveness, receive less attention. Certainly, any government is required to be flexible to change and responsive to any changes or new circumstances that require its attention.⁴⁵³ The development of this flexible and responsive government is almost impossible without the development of bureaucracy that is flexible to change.

In modern and complex governance, the government should be able to shift from fragmented functions to governance based on inter-organisational networks, which emphasise the elimination of cross-functional boundaries.⁴⁵⁴ Therefore, this section concludes that the goal of reform is not merely to make the government more efficient, but it also should include how to make it operate better for the benefit of its citizens. To understand whether the goals of bureaucracy reform in Indonesia have been achieved and whether they make the government function better, the next section of this chapter discusses the extent of progress and achievement in reform.

4.3 Progress and Achievement of Reform

Findings from the interviews show that there is still a long way to go for Indonesia to successfully reform the bureaucracy of its central government. Reform is still constrained by rent-seeking practices, transactional politics and other interests in the political arena, as a minister says:

⁴⁵⁰ Vilma Luoma-aho, 'Sector Reputation and Public Organisations' (2008) 21(5) *The International Journal of Public Sector Management* 446.

⁴⁵¹ Ewan Ferlie, 'Complex Organisations and Contemporary Public Sector Organisations' (2007) 10(2) *International Public Management Journal* 153.

⁴⁵² Caiden (n 8) 529.

⁴⁵³ Ferlie (n 451).

⁴⁵⁴ Ibid.

Q: Minister, can you tell me about the reform in our country?

A: I want to talk based on [a] political perspective, as my background is political. I saw two dominant aspects [influence the reform]. First is the political interest, this can be the interests of political parties that [are] represented by their members of parliament, along with their vested interests. Because of this, the product of our parliament is based on the ‘order’ of the parties. There are ten political parties in Indonesia; each of them has their agenda for this country. Their interests dominate our parliament. This can be seen in every hearing to discuss a bill; their vested interests are reflected in the bill being discussed. The problem is their interests are often incompatible with the government’s organisational needs. That is why we have so many agencies because their creation is embedded in the law. This is a consequence of interference by political parties through their members of parliament by using the process of law-making. It was hard to reform because of these. ...

Secondly, it seems to me that we have a mixed model of government, like now we follow a presidential system. On the other hand, we [are] still controlled and dominated by the decisions of [the] legislative. We do not purely apply a presidential system. This is the art, how to mix the nation’s interests with such political interests. The nation I mean here is the executive and the professional people in it that is not contaminated by politics, although it is hard for us to refer to the guidance of professionalism since the politics is always interfering. As an example, our government is currently putting much attention on developing infrastructures and it [is] constrained by the need to accommodate ‘the promises’ of our friends in the parliament to their supporters.⁴⁵⁵

A prominent scholar of public policy in Indonesia, former Vice Minister of Administrative and Bureaucratic Reform, Professor Eko Prasodjo, does not consider reform as a comprehensive measure to improve governance, because of its partiality and disintegration:

[R]eform was fragmented and partial. It was just like extinguishing the fire when there is a fire. We did something without having a comprehensive picture of it, and our assessment was fragmented and partial, limited to what we can do just to examine non-structural agencies that may not be functioning properly. But we never

⁴⁵⁵ Interview with Asman Abnur (n 352).

discussed the main design for the organisation of the government, how many ministries we need, how many non-ministerial agencies and independent agencies. Thus, the results [of reform] were partial and did not have long-term strategic value.⁴⁵⁶

There is no clear direction for reform, largely because the Indonesian government has not developed a grand design for its organisations. Therefore, there is no sufficient reference for the government to assess how many executive bodies it needs. In spite of this, there have been some reform achievements. One of these is the passing of a landmark law that regulates civil service management, *the Civil Service Act 5/2014*. This law provides legal rules that cover issues of recruitment, appointment, placement and promotion of the state apparatus. It stipulates that public officials must be politically neutral—banned from being partisans of political parties or supporting particular political views.⁴⁵⁷ Nevertheless, politics remain a strong influence. For example, many top echelons of public officials were appointed because of their connection to the political elites of a party. It reflects the loophole in *the Civil Service Act* and does not render civil servants apolitical bureaucrats, as Khatarina answers:

Q: How do you see the progress of our reform?

A: If bureaucratic reform is seen from the development of legislation framework, the birth of *Act 5/2014* is a significant milestone for our reform. The bill of this law was extensively discussed for two years [between the DPR and the government]. One of its important features is strengthening the neutrality of our bureaucrats. We know that the influence of politics on our bureaucracy is daunting; our bureaucrats are unprofessional because of this. However, after four years [since the enactment of *the Civil Service Act*], I still see that we have not achieved the goals of this law. The law itself is implemented in inconsistent manners. We still struggle to make our bureaucrats politically neutral.⁴⁵⁸

The other reform achievement is the restructuration of 34 ministries during the first term of Joko Widodo's presidency, the dissolution of 15 non-structural agencies and

⁴⁵⁶ Interview with Eko Prasodjo (n 351).

⁴⁵⁷ *Undang-Undang 5/2014 tentang Aparatur Sipil Negara* [Act 4/2014 on the Civil Service].

⁴⁵⁸ Interview with Riris Khatarina, Senior Researcher for the House of Representative (DPR) (Mas Pungky Hendra Wijaya, Jakarta, 21 January 2018).

restructuring of some non-ministerial agencies.⁴⁵⁹ However, executive bodies that were reformed here are those that were formed by the President using a Presidential Regulation (Perpres). A statute did not form them and the government has the authority to dissolve them without a consensus with the parliament, in the form of a law amendment.

President Widodo has also issued a directive to all executive bodies to stop formulating bills that have provisions for the creation of new agencies.⁴⁶⁰ Unfortunately, ministries and agencies under his watch do not consistently implement this directive. Arianti revealed that some institutions of the government still try to push the creation of a new body in a bill that they have prepared:

Political will, the truth is, it was just jargon, the Commission 2 of the DPR said that we need to re-evaluate the existing agencies, to merge or dissolve them, or to preserve what we need. But the fact is, almost all the bills initiated by the DPR were intended to create a new agency. While in the government, even there is a directive from the President, it was not fully implemented by the ministries with the reason that the bill initiated by the government are less in number compared to those from the DPR.⁴⁶¹

The ministerial and non-ministerial organisations were the first crucial issue undertaken by the current administration under Widodo's presidency.⁴⁶² One of Widodo's priorities was to repair the organisational patterns of the central government. However, the extent of his commitment is being questioned and there are polemics about reducing or increasing the number of organisations that existed, when his government actually increased the number.⁴⁶³ For example, a non-structural agency, Office of the President, was created to become the president's think tank. However, the Ministry of State Secretariat and the Cabinet Secretary already delivered this administrative function. Therefore, the involvement of the Office of the President was not necessary. If the government has too many ministries and agencies, it will be

⁴⁵⁹ Interview with Teguh Widjinarko (n 348); also see Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (n 4).

⁴⁶⁰ Interview with Diah Arianti (n 382); Interview with Vera Yuwantari (n 346).

⁴⁶¹ Interview with Diah Arianti (n 382).

⁴⁶² Sugandi Yogi Suprayogi, 'Sustainable Administrative Reform Movements Policy in Joko Widodo's Administration' (2017) 20(2) *JSP: Jurnal Ilmu Sosial dan Ilmu Politik* 117.

⁴⁶³ *Ibid.*

expensive to maintain its large organisations and pay a large amount of money for the salary of its bureaucrats.

Several other reforms that have been implemented include developing the e-government mechanism, improving performance measurement instruments, reconfiguring remuneration and improving accountability in the public sector, as well as its oversight mechanism, which includes combatting corruption. However, reform is still far from achieving its goals. This is shown by the rank of the 2018 Indonesian Corruption Perception Index that ranks Indonesia 89th out of 180 countries.⁴⁶⁴ Moreover, the ‘ease of doing business (EODB)’ ranking, released by the World Bank in 2019, shows that Indonesia’s EODB is 67.96, or 73rd out of 190 countries.⁴⁶⁵ This EODB score is far below its neighbours, Singapore, which obtained a score of 85.24, or 2nd out of 190 countries and Malaysia, which obtained a score of 80.60, or 15th. Indonesia’s EODB score is also below Australia, which scored 80.13, or 18th, but it still above the regional average score of 63.41 for East Asia and Pacific regions.⁴⁶⁶ These figures show that there is still a lot of work to be done to improve governance in Indonesia. According to the Minister, more innovations and breakthroughs are needed to reform the bureaucracy.⁴⁶⁷ All parts of the bureaucracy should change their mindset and culture and avoid doing the ‘job as usual’, to tackle reform challenges.⁴⁶⁸ In regards to the challenges of reform, the next section discusses the initial identification of major reform challenges.

4.4 Major Reform Challenges

Answers from the study participants show that politics, legislation and institutions’ sectoral egos are among the major challenges of reform. Indonesia follows the presidential system of government. However, the political forces outside the executive heavily influence the direction of reform. Decisions about reforming the government are the results of bargains and compromises between contending interests. For example, new agencies were created with the help of statutes, as a way to both preserve

⁴⁶⁴ Transparency International (n 329).

⁴⁶⁵ World Bank, ‘Doing Business 2019: A World Bank Group Flagship Report’ (2019) <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf>.

⁴⁶⁶ Ibid.

⁴⁶⁷ Interview with Asman Abnur (n 352).

⁴⁶⁸ Ibid.

the existence of the agency in question and to create available positions for high-rank bureaucrats who were affiliated with the interests of the elites:

Q: Minister, what do you think about the current structure of our bureaucracy?

A: Still too large, what we need is more functional staff with specific expertise, instead of administrators I often say that we need to be smarter than the private sector'. Many things [in the bureaucracy] are unreasonable, like we created certain positions just to accommodate [for] some people to have positions in the administration, which was wrong. ...

The DPR is really dominates; in deciding who will sit in certain top positions [in the administration], the government can only propose the candidates, it was them to decide, like in the Supreme Audit Council, there was a vested interest of doing it.⁴⁶⁹

He also says:

[R]eform is difficult to do because of that political interest. It is unavoidable in a democratic country like us.⁴⁷⁰

[T]he biggest constraint is always the law. We always create a new law for every problem.⁴⁷¹

Similarly, one of the Minister's special advisers answered:

Q: Do you think there was a vested interest in the creation of a new institution under the new law?

A: We always have that vested interest, first, to strengthen the position of an institution, it mostly happened to non-ministerial agencies. Since they wanted their existence to be acknowledged, they raced to have a provision of themselves in the legislations. Second, sometimes institutions were created because certain individuals or political groups wanted to have certain people affiliated with them, to have a top administrative position for their own gain. This will be worse for

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

institutions that the DPR has given the power to conduct the fit and proper test for the people who will lead them.⁴⁷²

The appointment of high-ranking officials is sometimes based on their closeness with elites of political parties, rather than their competence.⁴⁷³ Politics can be influential in some top agencies with huge power and budgets, and the strong power of the DPR can be problematic for reformation. The dominance of the DPR also includes the decision to appoint the heads of certain agencies and ambassadors. In some agencies, the government can only propose candidates to the DPR, who then decides who will lead those agencies. To approve or reject the nominees, the DPR often applies a lengthy fit and proper test, which can be an object of bargaining.⁴⁷⁴ Instead of improving the bureaucracy and governance, reform is being used to make ways for rent-seeking and oligarchy.

Moreover, since the fall of the authoritarian regime under Suharto in 1998, ministries and agencies have raced to pass laws in their respective areas to protect their existence. Many leaderships in executive bodies are afraid of the dismissal of their institution that could potentially harm their position. Hence, they seek protection by formulating a bill and passing it to the parliament.⁴⁷⁵ Clearly, legal rules have been used to mushroom the bureaucracy.

March and Olsen describe political institutions as too interventionist and influential.⁴⁷⁶ The legislation is certainly a political product, and this can be ‘interventionist’ too. Many laws passed by the DPR did not support reform, as they were too interventionist and were based on the perspectives of their own sectors. Widyantini answered:

I think our laws and regulations did not provide significant support (to reform), each of them is still talking their own sector and the sectoral egos in our administrative organisations are still high. For the existing laws, there is not much that we can do ... In my opinion, by having the terms in a statute that creates a new agency, it

⁴⁷² Interview with Teguh Widjinarko (n 348).

⁴⁷³ Interview with Asman Abnur (n 352).

⁴⁷⁴ Interview with Teguh Widjinarko (n 348).

⁴⁷⁵ Ibid.

⁴⁷⁶ March and Olsen (n 35) 97.

means the law is interfering with how government should build its organisation and there are still interventions of the DPR in the government.⁴⁷⁷

The culture of the sectoral ego, manifested through the process of law-making, is a significant obstruction to reform. Indonesia must reverse this legal culture. The next section discusses the aspect of legal culture in Indonesia.

4.5 Legal Culture of Reform

The central issue linked to reform that is discussed in this study is reorganisation. The legal cultures of law-making discussed here are those that are relevant to reorganisation. As mentioned in Chapter 2, the law is the source of administrative power in Indonesia. The 1945 Constitution stipulates that Indonesia is a *rechtsstaat* (state law), meaning that the government can only exercise power based on the power given by the laws. Both sides of powers, executive and legislative, have almost equal power to initiate bills. This bill can only become law after a joint agreement on its terms has been reached between the DPR and the president. However, Khatarina observed that the DPR, as the legislative branch of power, dominates the initiatives to propose bills:

Q: Based on your experience in assisting the DPR, how often do you see that there is an inclusion to create a new agency inside a bill?

A: Almost every bill has the intention to create a new agency, although not all the final versions of the bill eventually [has the term to create a new agency]. However, I saw that, since the reformation, almost every bill has the term for a new agency.⁴⁷⁸

Q: And most of the bills are initiated by the DPR?

A: Yes, indeed.⁴⁷⁹

Similarly, Arianti answered:

Q: Since you have extensive experience getting involved in legislation-making, have you encountered the intention to create a new agency under a bill?

⁴⁷⁷ Interview with Rini Widyantini (n 347).

⁴⁷⁸ Interview with Riris Khatarina (n 458).

⁴⁷⁹ Ibid.

A: Many times, almost every bill wanted to establish a new institution. Before I held my current position, I was also involved in the bill of Cultural Law, also the Bill of Publishing Law, Architecture Law, National System of Science and Technology Law. In those laws, they, I mean the DPR, always proposes to create a new institution, including in the one that I [was] recently involved [in], the bill of Cultural law.⁴⁸⁰

Q: Does it mean that such proposals often came from the DPR, through the bills that they proposed?

A: Yes, from the bills I have mentioned, there is one that is initiated by the government, the National System of Science and Technology Law, we did not incorporate the idea to create a new institution in that bill, but the DPR, on one occasion, wanted to have a new institution in that bill, we told them that we already have the LIPI [Indonesian Agency on Science] and BPPT [the Agency for Technological Assessment and Application], we do not need another institution addressing the same issue.⁴⁸¹

Through the legislation it passes, the DPR significantly contributes to bloating the bureaucracy. Laws can either support or constrain reorganisation. The problems surrounding reform presented in this study have existed over the years and are partly the result of Indonesia's legal culture in law-making. It has been commonly assumed that legislation often reflects the vested interests of political parties. These interests play a crucial role in managing the government.⁴⁸² Unfortunately, those interests often contradict the need for efficiency. Findings from the interviews indicate that there are practices to form executive bodies to create top-echelon jobs for the potential affiliation of a particular political party, to return the favour for helping the party during the election, or to have someone as a puppet in the administration to benefit the party.⁴⁸³

In contrast, the government is somewhat powerless when discussing bills with the DPR, rendering it difficult to filter the DPR's intention to insert provisions for the establishment of a new agency in a statute. Although it is common for politics to

⁴⁸⁰ Interview with Diah Arianti (n 382).

⁴⁸¹ Ibid.

⁴⁸² Interview with Asman Abnur (n 352).

⁴⁸³ Ibid.

intervene in the administration of any democratic country, this has become a crucial problem, as it results in an increasing number of agencies. Since Indonesia reopened the doors for democracy in 1999, legislative processes have been used by political parties to intervene in the organisations of the government.

According to the Constitution, which follows the presidential system, Indonesia separates the powers of executive and legislative. However, the DPR, with its legislative power, harnesses a greater power in law-making. The Minister of Administrative and Bureaucratic Reform argues that almost every new problem in Indonesia is addressed by establishing a new law,⁴⁸⁴ which necessitates the establishment of a new agency for the matter. Unfortunately, there are already ministries or agencies responsible for addressing the problems, or potentially able to work in that area, resulting in duplications. Legislatures in the DPR often urge for the establishment of a new agency through their bills to address specific problems, disregarding the fact that it is already the responsibility of existing institutions. Since legislation is the product of political processes, reorganising the government sometimes relies on political considerations, rather than holistically improving governance. Instead of solving problems, the laws create a new problem in governance.

As mentioned above, a bill needs to be deliberated between the DPR and the president to reach a joint agreement to become law. In reality, the president himself never discusses a bill with the DPR, as he is always represented by his ministers and their high-ranking bureaucrats when discussing a bill with the legislative. This further weakens the government's position in discussing legislation with the parliament. Many ministers are also representatives of political parties; they are selected from either the president's affiliated parties or parties that form a coalition to support the president in his election campaign. Despite having a position in the coalition cabinet, some ministers are believed to remain attached to their party attributes. What further weakens the government's bargaining power is the top-echelon bureaucrats fear of being deemed 'unfit' by the DPR, which may lead to the DPR recommending their disposal. This weak position renders the government reluctant to push its reform

⁴⁸⁴ Ibid.

agenda through the bill being discussed.⁴⁸⁵ These legal culture issues shaped the current bureaucratic posture.

Moreover, the sectoral ego has caused disharmony of laws and fragmented reform, as each institution perceives the need to remain relevant by mentioning itself in its sectoral legislation. Many laws are passed based on their sectoral problems. As institutions are statutorily established, reorganisation may prove difficult, since it requires organisational provisions to amend the law. Hence, reorganisation is not simply an administrative measure, but also a political process. Statutes frequently mention the name and functions of a ministry or agency as a way to strengthen their power and preserve their existence, which complicates reorganisation. Since too many government organisations are ‘trapped’ by legislation, Widyantini mentioned that there are times the President felt frustrated with his administration when institutional problems were considered.⁴⁸⁶

Yet, a Member of Parliament argued that distrust of existing institutions might lead the DPR to propose the establishment of a new agency to address a particular issue, although the government already established an agency to undertake that function:

Q: Some bills contain the terms for establishing a new body, as you have affirmed, what is the political motive behind this?

A: Maybe it [is] simply [that] the government needs to give a better explanation and argument to our legislators (in DPR) that such function [is] already addressed [by the existing institution] ...⁴⁸⁷

Q: So, if a proper explanation is given, do you think the DPR will accept the argument that we already have KL [a ministry or agency] for that issue?

A: I am sorry to say that there is a perspective of distrust of our legislators to the government. Therefore, the government should be able to give a better explanation. The government should ensure that its existing institutions already performed their job. Hence, [there is] no need [for] a new agency.⁴⁸⁸

⁴⁸⁵ Ibid.

⁴⁸⁶ Interview with Rini Widyantini (n 347).

⁴⁸⁷ Interview with Ahmad Muqowam (n 350).

⁴⁸⁸ Ibid.

Similarly, Khatarina said:

[P]olitically, there is a growing trend that shows the parliament is dissatisfied with the performance of the government. They assumed the existing ministry or agency did not do their job effectively. Hence, they [the parliament] came up with such solution [creating a new agency], it may [be] because [the parliament] is not satisfied [with the government].⁴⁸⁹

The practice of creating a new agency (under the terms of legislation) when there is already an existing institution in that area potentially leads to duplications. Obviously, without changing the legal culture on how the law relevant to bureaucracy is made, reorganising the government can be challenging. Certainly, no government can succeed without a robust and effective administrative system, nor can an administrative system survive without the support of its bureaucracy.⁴⁹⁰ To some extent, restructuring may cause an unpleasant experience, as some might lose their comfortable position, or even their career. This also has become one of the main reasons why agencies have taken steps to prevent their organisation from being closed down, which they do with the help of the clauses in their sector's legislation.

4.6 Chapter Summary

This chapter concludes that the goals of bureaucratic reform in Indonesia are mainly to establish an effective and efficient bureaucracy, as well as to improve public services. Reform should not only be intended to make the government more efficient. Most importantly, the goal of reform is to make the government operate better, for the benefit of its citizens. However, bureaucratic reform in Indonesia is still far from succeeding.

Various political interests influence bureaucracy reform. In addition to this, legislation and the institution's sectoral egos are among major challenges facing reform. These aspects shape the legal culture, in regards to how the laws relevant to administrative institutions are made. Hence, the legal culture related to the process of law-making, which influences reform, needs to be changed. This is crucial as it affects the ability

⁴⁸⁹ Interview with Riris Khatarina (n 458).

⁴⁹⁰ David S Brown, "Reforming" the Bureaucracy: Some Suggestions for the New President' (1977) 37(2) *Public Administration Review* 163.

to conduct reorganisation. The next chapter discusses further how reorganisation is conducted.

Chapter 5: Current Practice of Reorganisation

5.1 Introduction

Reorganisation is the essence of bureaucratic reform. It involves the improvement of government services and without such improvement, it would be meaningless.⁴⁹¹ Institutional change is the main focus of reform in Indonesia. It aims to create the right function, right sizing and proportional organisation.⁴⁹² However, government organisations face numerous challenges and operate in a complex environment of conflicting political interests. These conflicting interests have shaped Indonesia's bureaucratic structures.

Peters believes that no national government would argue that their current public sector has worked orderly and that reform is unnecessary.⁴⁹³ Even after substantial changes in their administrative systems, governments will persistently encourage greater change towards a better, more cost-effective government. Each country has its own character and pattern of reform, but most governments would agree that structural change is the main feature of any reform.⁴⁹⁴

This chapter discusses the current practices of reorganisation in Indonesia. Following this introduction, the next section outlines the Indonesian bureaucratic structures. Subsequent sections discuss the elements of effective and efficient organisation, business processes and the procedure and process for reorganisation. In addition, this chapter examines how reorganisation is conducted in other countries and lessons that can be learned from their experiences. Following discussions of these aspects, the chapter's findings are summarised.

⁴⁹¹ Interview with Vera Yuwantari (n 346).

⁴⁹² Ibid.

⁴⁹³ B Guy Peters, 'From Change to Change: Patterns of Continuing Administrative Reform in Europe' (2001) 1(1) *Public Organization Review* 41.

⁴⁹⁴ Ibid.

5.2 Overview of the Structure of Bureaucracy

As mentioned in Chapter 1, the Indonesian central government has 34 ministries, 29 non-ministerial/special agencies, and 103 non-structural agencies.⁴⁹⁵ Indonesia's government is divided into ministries, which are subdivided into directorate generals. Although administrative reforms are occasionally designed to provide an alternative mechanism to bypass rigid hierarchies and boundaries, the presence of line ministries remains the major feature in the contemporary state apparatus in Indonesia.⁴⁹⁶

Most participants in this research agreed that the structure of bureaucracy in Indonesia is still too large. The Minister of Administrative and Bureaucratic Reform also acknowledged this in an interview (See Section 4.4 of Chapter 4).⁴⁹⁷ Moreover, one of his deputies said that each institution in the administration has a different level of organisational 'maturity', with some tending to build a large organisation to increase their budget and control:

[T]he maturity of each organisations is different, if we do not restrict, they will tend to create a large organisation. Why this has happened? Because in our republic, the system we had produced a mindset that in a large organisation, there will be new positions. They do not see organisation as a critical tool to achieve our national goals. Organisations were used only as their tool to obtain a position and power, and this is not right.⁴⁹⁸

The large structure of the Indonesian administration is also complicated by a complex budgeting system. Yuwantari said:

Q: Have you encountered a reorganisation proposal which has the sole purpose of enlarging the budget and number of officials?

A: Many times. This is largely because there is a limitation set up by the Ministry of Finance of the maximum—how much budget can be utilised by an echelon four or echelon three structure. When an echelon four in a UPT [technical delivery unit]

⁴⁹⁵ Ministry of Administrative Reform of the Republic of Indonesia, 'Policy Paper: Restructuring the Structures of Bureaucracy—Recommendation on the Structure of Central Government using the Concept of Machinery of Government' (2014).

⁴⁹⁶ Interview with Rini Widyantini (n 347).

⁴⁹⁷ Interview with Asman Abnur (n 352).

⁴⁹⁸ Interview with Rini Widyantini (n 347).

realises that its budget is insufficient to perform its tasks, it will then ask to be upgraded to echelon three in order to have more budget. Second, for LNS [independent agencies], initially, some of them actually just want to be “budget users” and do not want to manage their budgets independently. However, our financial system says that if they are a separate entity, they need to manage their budget independently and it requires them to create a *satker* [task force] for managing their budget. At the same time, if they are still an echelon two, three or four, they are not allowed to manage their budget. Thus, many of them ask to be upgraded to an echelon one. ...

It is wasteful for most agencies to have a large organisation. However, in our financial system, of *the State Financial System Act 17/2007*, if they do not build a large organisation in which at least an echelon one structure (similar to directorate generals), they are not allowed to manage their budget independently. Their budget should come from their parent agency. This is a reason why agencies want to build a large structure.⁴⁹⁹

The Indonesian State Financial Law (Act17/2007) stipulates that to manage its budget independently, an agency must build a *satuan kerja (satker)*,⁵⁰⁰ a structure that is equivalent to an echelon one structure, such as a directorate general. In the Indonesian administrative system, an echelon one is a large organisation with considerable power. Structures below echelon one have restrictions on managing their budgets independently. Because of this, executive bodies tend to enlarge their organisation to increase their power and budget and strengthen their administrative position. Similarly, an interviewee said that ministries tend to enlarge their directorate generals, as these are the operating elements that are able to utilise and manage a large budget.⁵⁰¹ Widyantini also postulates that this kind of unnecessary enlargement is wasteful for the budget.⁵⁰²

Constitutionally, the government exercises its power based on the power given by the laws.⁵⁰³ Each type of institution used by the government to exercise power has its own organisational characters. In the central government, these institutions may include,

⁴⁹⁹ Interview with Vera Yuwantari (n 346).

⁵⁰⁰ *Undang-Undang 17/2003 tentang Keuangan Negara* [Act 17/2003 on State Financial].

⁵⁰¹ Interview with Bambang Supriyono (n 389).

⁵⁰² Interview with Rini Widyantini (n 347).

⁵⁰³ See *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945] art 3.

but are not limited to, ministries, non-ministerial agencies and non-structural agencies (LNS), as shown in the figure below.

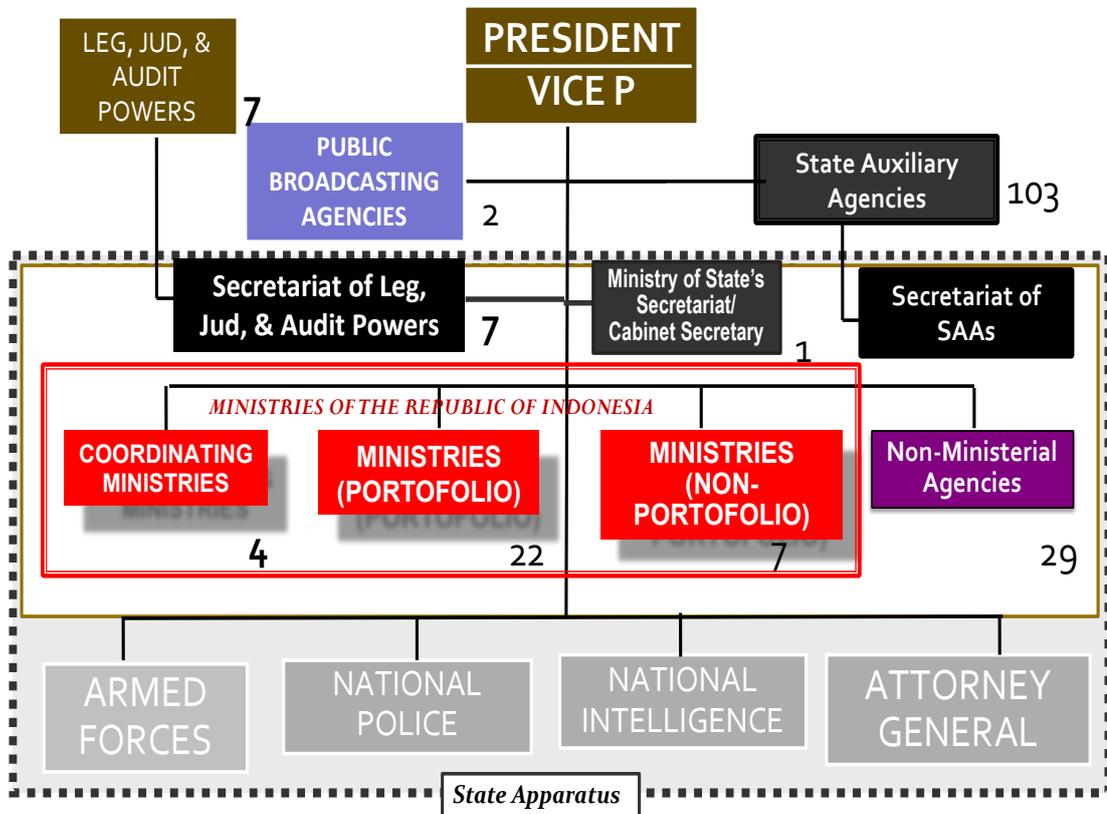


Figure 5-1 The Executive Structure of the Indonesian Government⁵⁰⁴

As Article 17 of the 1945 Constitution stipulates, ministers assist the President/Vice President to govern the country, according to their respective areas.⁵⁰⁵ *The State Ministries Act* divided ministries into three clusters. The first cluster includes ministries whose nomenclatures are explicitly mentioned by the Constitution. These are exclusively for the ‘triumvirates’, namely the Ministry of Home Affairs, the Ministry of Foreign Affairs, and the Ministry of Defence.⁵⁰⁶ The second cluster includes ministries according to the governance areas in the Constitution, and the third cluster includes ministries responsible for elaborating, coordinating and synchronising government programs.⁵⁰⁷ The first and second cluster ministries are often referred to

⁵⁰⁴ Ministry of Administrative and Bureaucratic Reform, ‘Restructuring Indonesian Government’ (2015).

⁵⁰⁵ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

as the ‘portfolio ministries’ and the third cluster is the ‘non-portfolio ministries’.⁵⁰⁸ Also, the current government has four coordinating ministries that are neither portfolio nor non-portfolio. There are 46 government affairs listed in *the State Ministries Act*. Below are the areas of responsibilities, according to the cluster of ministries and the 46 functions.

Table 5-1 Area of Responsibilities According to the Ministerial Clusters and the Administrative Affairs in *the State Ministries Act*⁵⁰⁹

Area of Responsibilities		
First Cluster Ministries	Second Cluster Ministries	Third Cluster Ministries
1. Home Affairs	4. Religion	29. National Development Planning
2. Foreign Affairs	5. Law	30. Administrative Reform
3. Defence	6. Finance	31. State Secretariat
	7. Security	32. State-Owned Enterprises
	8. Human Rights	33. Land
	9. Education	34. Population
	10. Culture	35. Environment
	11. Health	36. Science
	12. Social Welfare	37. Technology
	13. Workforce	38. Investment
	14. Industry	39. Cooperatives
	15. Trade	40. Small and Medium Businesses
	16. Mining	41. Tourism
	17. Energy	42. Women’s Empowerment
	18. Public Works	43. Youth
	19. Transmigration	44. Sport
	20. Transportation	45. Housing
	21. Information	46. Development of Rural Areas
	22. Communication	
	23. Agriculture	
	24. Plantation	
	25. Forestry	
	26. Farming	
	27. Marine	
	28. Fisheries	

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid.

However, *the State Ministries Act* restricts the administration to, at most, 34 ministries. Since the enactment of this law in 2008, the number of ministries to date has always been 34. However, their structure, as well as the nomenclature, changed alongside the succession of national leadership resulting from the general election. For example, the previous government, of Susilo Bambang Yudhoyono, only had three coordinating ministries, focusing on three major issues, namely (a) economic, (b) political, legal, and security, and (c) public welfare. The current Cabinet of President Widodo has four coordinating ministries (a) economy, (b) political, legal and security, (c) human development and culture, and (d) maritime. The creation of these coordinating ministries shows that the administration sees the issue of coordination as an institution rather than as a mechanism. Ahmad argues that this has made coordination between executive bodies become inflexible:

Conducting coordination in Indonesia is difficult because we never map the processes of our institutions. If I may say, we do not need to create an institution just to establish coordination between agencies, but now we have a number of coordinating ministries or coordinating agencies. This would make coordination not flexible, as it formed into institutions rather than as a mechanism.⁵¹⁰

During the second term of his government, from 2009 to 2014, Yudhoyono reconfigured his ministries several times. The Ministry of National Education became the Ministry of Education and Culture, the Ministry of Tourism and Culture became the Ministry of Tourism and Creative Industry and the Ministry of State Apparatus became the MoABR. Following the 2014 general election, the elected President Joko Widodo maintained 34 ministries. Widodo, however, also conducted restructuring by creating new ministries, merging ministries or moving specific roles of a particular ministry into another ministry.

After his instalment as president, Joko Widodo created four coordinating ministries, preserving two from the previous cabinet (the Coordinating Ministry of Political, Legal, and Security Affairs and the Coordinating Ministry of Economic Affairs) and adding two (the Coordinating Ministry of Maritime Affairs and the Coordinating

⁵¹⁰ Interview with Yanuar Ahmad (n 365).

Ministry of Human Development and Culture). Further, 13 out of 34 ministries were restructured, two of which were new ministries, namely the Coordinating Ministry of Maritime Affairs and the Ministry of Land and Spatial Planning. One of the restructured ministries has new nomenclature—the Coordinating Ministry of Public Welfare Affairs changed its name and function to the Coordinating Ministry of Human Development and Culture. Ten ministries, their functions and their jobs were rearranged. They are the Coordinating Ministry of Economy Affairs; the Coordinating Ministry of Political, Legal, and Security Affairs; the Ministry of Home Affairs; the Ministry of Village, Underdeveloped Regions and Transmigration; the Ministry of Public Works and Public Housing; the Ministry of Tourism; the Ministry of Environment and Forestry; the Ministry of Education and Culture; the Ministry of Research, Technology and Higher Education and the Ministry of Manpower.

Restructuring ministries, as well as other institutions, necessitates precision and special care. Reorganisation can sometimes cause problems; it may trigger anxiety amongst bureaucrats and concerned individuals who are afraid of losing their positions. Reorganisation often requires the sectoral legal rules linked to such organisations to be altered or revoked. This has become a constraint to speeding up the process of reorganisation. Therefore, reorganisation at times requires an aptitude to find loopholes in such legislation to avoid contradictions.

The president establishes non-ministerial agencies, or LPNKs, for a specific task. Their establishment supposedly comes from the president's discretion and prerogative right. This is according to the Presidential Decree 103/2001 on the position, task, function, power, organisation and governance of non-ministerial agencies, which provides for LPNKs, as a central government institution established by the president, to conduct specific tasks, from the president, in accordance with the prevailing laws and regulations.⁵¹¹ The Indonesian Government has established 30 LPNKs using various legal bases, from statutes (*UU*) to executive order instruments, such as Government Regulation, Presidential Decree or Presidential Regulation.

⁵¹¹ *Presidential Decree 103/2001 on the Position, Task, Function, Power, Organisation, and Governance of Non-Ministerial Agencies.*

Legislations, however, are sometimes inconsistent with how they position LPNKs in the administrative structure. As an illustration, Article 25 of *the State Ministries Act* mentions that LPNKs are to be coordinated by ministries, according to their relevant governance area, in performing their responsibility.⁵¹² In other words, LPNKs are subordinates, or a proxies, of ministries to support or supplement the activities of ministries, or to undertake special tasks in certain areas as proxies of ministries. However, some LPNKs have rejected such ideas and elected to directly report to the president (instead of to a minister) in their sectoral legislation. This action allows LPNKs to have positions directly under the president (instead of a ministry) and it breaches Article 25 of *the State Ministries Act*. The table below provides further illustrations on how LPNK sectoral laws are inconsistent with *the State Ministries Act*.

Table 5-2 Examples of LPNKs Stated to be Directly Under the President

LPNK	Statutes	Establishing Terms (Translated to English)
<i>Badan Kependudukan dan Keluarga Berencana Nasional</i>— National Population and Family Planning Board	<i>The Population and Family Growing Act 52/2009</i>	Article 53: (1) To control the growth of population and to conduct family empowerment, this law establishes the National Population and Family Planning Board, hereinafter referred to as BKKBN. (2) BKKN, as referred in the paragraph (1), is a non-ministerial agency, directly under and responsible to the President.
<i>Badan Koordinasi Penanaman Modal</i>—the Investment Coordinating Board	<i>The Investment Act 25/2007</i>	Article 27: (1) The Government is responsible for coordinating investment policies, either in the form of intragovernmental institutions coordination, between the government and Bank of Indonesia, between the central and local governments, or between local governments. (2) The Investment Coordinating Board conducts the coordination of investment policies as referred to paragraph (1). (3) The Investment Coordinating Board, as referred in paragraph (2), is chaired by a Chairman and directly responsible to the President.

⁵¹² *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

LPNK	Statutes	Establishing Terms (Translated to English)
		(4) The Chairman of the Investment Coordinating Board, as referred in paragraph (3) is appointed and dismissed by the President.
Badan Informasi Geospasial (BIG)— Geospatial Information Agency	<i>The Geospatial Information Act 4/2011</i>	Article 22, para (2) and (3): (2) The management of geospatial information, as referred in paragraph (1) is conducted by an Agency named the Geospatial Information Agency and established to replace the Coordination Agency for National Survey and Mapping as mandated by this law. (3) Agency, as referred in the paragraph (2), is directly under and responsible to the President.
Badan Nasional Narkotika (BNN)— National Narcotic Agency	<i>The Narcotic Act 35/2009</i>	Article 64: (1) To prevent and eliminate illicit narcotics and its precursors, as well as their misuse, this law establishes the National Narcotic Agency, hereinafter referred to as BNN. (2) BNN, as referred in paragraph (1), is a non-ministerial agency directly under and responsible to the President.

Because many statutes gave LPNKs the right to have a direct responsibility to the president, many LPNKs have lost their initial characters as proxies of ministries. Thus, it can be difficult to distinguish between a ministry and an LPNK. Arguably, creating an LPNK using the terms in the *Undang-undang* has shifted the nature of LPNKs themselves. In the past (particularly during the era of President Soekarno and President Soeharto), LPNKs were established by presidential administrative power to manage administration. Since ‘the reformation’ (post-1998), legislations have produced new LPNKs and reinforced the existing LPNKs. Hence, their creation now mostly comes from consensus between the DPR and the president, through the process of law-making.

The existence of LPNKs and their position in the administration need to be redefined so the Indonesian government can have an efficient structure. Such redefinition is essential for the government to optimise the roles and contributions of LPNKs.

Eventually, it will lead to the development of a proportional structure with the right size or function for any institution. Moreover, reconsidering the position of LPNKs in the administration can help the government reduce duplications, thereby increasing effectivity and efficiency of governance. In this regard, the Minister of Administrative and Bureaucratic Reform argued that the position of LPNKs in the structure of the government needs to be ‘under the coordination of a related ministry’ because LPNKs are constitutionally created by presidential discretion.⁵¹³ As such, the use of legislation to create an LPNK is better avoided.

In addition to ministries and LPNKs, the central government also has non-structural agencies, or LNS’s; statutes establish at least 73 of these.⁵¹⁴ The creation of LNS’s started to mushroom after the downfall of Suharto in 1998. The nomenclature, structure and position of LNS’s in the Indonesian machinery of government are so diverse; some LNS’s are directly responsible to the president, some to a ministry and others to an LPNK. An LNS itself is sometimes considered ‘independent’, that is, outside the structure of a ministry or LPNK.

LNS’s are similar to the independent agencies in the US federal government. However, in Indonesia, LNS’s range from small boards, commissions and committees to larger independent agencies. Most of them are dealing with functions outside the area of the executive (Ministries and LPNKs). However, there are also some LNS’s addressing the operation of the government, economy and corruption investigators and conducting regulatory control.

As legislation is a political product, the making of some executive bodies is the result of a political consensus. These institutions can only be reorganised as required and by the law. Since sectoral statutes protect many institutions, the spirit of efficiency is not evident in these statutes. These legislations have contributed to the development of a large and fragmented bureaucracy.

There are too many pragmatic interests involved in institutional creation⁵¹⁵ and bureaucracy, as the policy executor, often follows the direction of such pragmatic

⁵¹³ Interview with Asman Abnur (n 352).

⁵¹⁴ Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (n 307).

⁵¹⁵ Interview with Eko Prasodjo (n 351).

ideology.⁵¹⁶ Politicians still exploit the bureaucracy as if it is their servant, rather than the public's servant. However, a bureaucracy that is clean from any political influence is impossible, because the bureaucracy itself was established to execute a wide range of political decisions and policies. Therefore, if temporary political interests distort the public sector, it becomes ineffective and inefficient.⁵¹⁷ Nevertheless, the MoABR is still optimistic about the future shape of Indonesian administration, as long as the process of building agencies reflects the clauses of presidential power in managing government according to the Constitution.

The Indonesian Government itself is fully aware that its current machinery of government is still too large.⁵¹⁸ However, the Minister of Administrative Reform himself implies that he is unable to determine the exact formulation of the ideal figure of administration—what is too large, ideal or too small.⁵¹⁹ There is no ideal number of how many ministries and agencies the Indonesian government should have. Instead, he argued that the government would have the ideal number of administrative bodies when no functions overlap and there is no duplication. Similarly, Widjinarko mentioned that the government would have the ideal structure when collaboration and coordination between departments could be done without any constraint, particularly from the problem of sectoral ego.⁵²⁰

The administration transition from Susilo Bambang Yudhoyono to Joko Widodo in 2014 led to some increases in ministries' functions, despite there being the same number of ministries. Determining the ideal number of ministries or agencies is indeed relative and subject to prevailing challenges. As previously mentioned, there are 34 ministries in the current government, similar to the previous government. However, in terms of workload, some ministries have additional functions. Therefore, their organisations have become larger, with many additional directorate generals under certain ministries. Institutional enlargement or reduction is common during ruler transition in Indonesia, depending on what the new government needs to deliver their goals. Institutional development in Widodo's government has put more stress on the

⁵¹⁶ Yogi Suprayogi (n 461).

⁵¹⁷ Ibid.

⁵¹⁸ Interview with Asman Abnur (n 352); see Section 4.4 of Chapter 4.

⁵¹⁹ Ibid.

⁵²⁰ Interview with Teguh Widjinarko (n 348).

challenges and priorities of the central government. This has led to the establishment of several new agencies (such as the Creative Economy Agency to support the new priority programs), the reinforcement of the Maritime Security Agency (Bakamla) and the separation of various tasks and functions.⁵²¹

These findings support the minister's observation that the executive structure is still too large and that Indonesia still has too many ministries and agencies, mainly because of significant job duplications among them (these are discussed further in section 5.4). Since overlap and duplication remain the prominent factor, it is difficult for the government to have an effective and efficient organisation. Similarly, a member of parliament said:

What I saw is, our government is not efficient. Not only oversized, but some works that can be done by a computer still done by a person. In this era of advanced technology, we should be able to transfer some workload from people to machine. If we do this, we will be able to improve efficiency in our public sector significantly.⁵²²

The other political forces outside the executive, such as parliament or political parties (and their elites), may have a different perspective than the government on how the government should build its organisations. To understand reorganisation is also to understand administration as a political process. Arnold states that 'We will not understand public administration until we understand administration as a political process.'⁵²³

Sims argues that politicians often have their own interests and do not always have the perfect knowledge of the issues under discussion.⁵²⁴ Similarly, Arianti observes that many members of the DPR do not have sufficient legal backgrounds, particularly in the area of administrative law and constitutional law.⁵²⁵ These problems influence reorganisation. To decide between conflicting goals and find the best organisational decision can be challenging. Decisions are the results of negotiation, bargains and

⁵²¹ Yogi Suprayogi (n 462).

⁵²² Interview with Abdul Kharis (n 401).

⁵²³ Peri E Arnold, 'Reorganization and Politics: A Reflection on the Adequacy of Administrative Theory' (1974) 34(3) *Public Administration Review* 205.

⁵²⁴ Ronald R Sims (ed), *Change (Transformation) in Government Organizations* (Information Age, 2010) 11.

⁵²⁵ Interview with Diah Arianti (n 382).

compromises, actualised in the legislation. Because of this, the government's organisation becomes less effective and efficient. The next chapter of this thesis discusses what makes an effective and efficient organisation for the government.

5.3 What Makes an Effective and Efficient Organisation

Interview findings show that to be considered 'ideal', the government needs to be effective and efficient. However, as shown in Chapter 3, not all interviewees in this study agree that small and lean structures are effective and efficient. Even the Minister of Administrative and Bureaucratic Reform does not know the ideal figure of how many executive bodies the Indonesian government should have.

The public tend to assume that government bureaucracy is all bad because of its size and complexity. Brown states that 'they provide ample opportunity for even the most uninspired to find something wrong with them.'⁵²⁶ Reorganising the government is often announced as aiming to modernise and streamline the government. However, the problem is not only how big it is, but the complex requirements that are also being placed on obsolete structures. Brown posits that there are practical limits on the size of government, as there are limits to the size and height of buildings.⁵²⁷ It can be both impractical and uneconomic to have agencies beyond such limit and Brown argues that an increasing number of organisations is not always a good remedy for the increasing workload of the government.⁵²⁸

Osborne and Gaebler's idea for 'reinventing government' is that the government should reinvent itself, by focusing on solving collective problems and doing more at less cost.⁵²⁹ Downsizing the government is one of the central arguments of 'reinventing government'. The concept emphasises efficiency—having fewer agencies facilitates the government doing more for less cost, which is central for 'reinventing government'. The main objective of most downsizings—particularly in developing countries—is the pursuit of effectivity and efficiency. Peters observed:

⁵²⁶ Brown (n 490).

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (Addison-Wesley, 1992).

While downsizing, in the public sector of developing countries, is occasionally necessary in the framework of structural adjustment and fiscal austerity, those very factors that give cause for downsizing (unsustainable budget deficits, debt levels, etc.) can also be used to trigger a wide-ranging reform, including public sector financial management. Restructuring of the civil service can then be one of the results of an overall reform initiative, rather than representing an isolated effort, with perhaps few repercussions on management efficiency and effectiveness in the public sector.⁵³⁰

The orthodox theory of public administration is associated with the design of the administrative structure and their procedures, which promote the effectivity and efficiency of the bureaucracy.⁵³¹ It is related to which departments could be reduced, positions that could be eliminated and expenses that could be slashed, despite the fact that, over the years, assessments of public expenses have shown that restructuring may not result in major savings.⁵³² Franklin Roosevelt argued that ‘we have to get over the notion that the purpose of reorganisation is economy.’⁵³³

However, this thesis has not provided convincing evidence for the proposition that having too many agencies will result in inefficiencies. Instead, the assumption for this thesis is mostly based on interview sources. It is a challenge to find organisational theories in the public sector to enrich discussion in this section for several reasons. First, as Christensen et al. argue, organisational theories traditionally concentrate on private organisations.⁵³⁴ Second, not much organisation theory is sourced from political and legal science.⁵³⁵ There has been little contact between political science and organisational theories, as Christensen et al. state:

Indeed, organisation theory is more frequently found in business schools than in departments of political science. As a result, organisational research has been criticized for being too preoccupied with general theories about formal organisations and for having neglected the important political-administrative

⁵³⁰ Lucien Peters (n 37) 381.

⁵³¹ March and Olson (n 282).

⁵³² Ibid.

⁵³³ Ibid.

⁵³⁴ Tom Christensen et al, *Organization Theory and Public Sector: Instrument, Culture, and Myth* (Routledge, 2007) 2.

⁵³⁵ Ibid.

organisations and the connection between organisational design and the content of public policy.⁵³⁶

Contrary to the idea of ‘reinventing government’, Muqowam asserted that, as long as the need to have a large bureaucracy can be justified, there should be no issue with the government building a large bureaucracy:

The goal of institutional reform should not merely [be] to shrink organisations and reduce agencies. Instead, it should aim to improve public services, professionalism and administrative roles, regardless of the size of the bureaucracy. It should be fine to have a massive structure as long as it can be justified.⁵³⁷

Davis et al. similarly argue that the real business of government is policy achievement, not departmental arrangements.⁵³⁸ Davis et al. emphasise that any change within the engine of government should have justifications to strengthen managerial leadership, build on the principles of better management, increase efficiency and reduce expenditure and duplication.⁵³⁹

Nowadays, changes are fast and it will be hard for any government to handle new challenges if they are unable to adapt and adjust easily. Some scholars, such as Kettl and Fesler, disregard the importance of a streamlined organisation for efficient governance. They suggest that a continuous improvement to the organisation of government is necessary, and that it does not matter if the resulting administration will be big or small, as long as it was formed to improve the performance of the bureaucracy and advance public services.⁵⁴⁰ However, Davis et al. emphasise that expediency and political need, rather than organisational principle, are the strongest factors of conducting reorganisation. Government organisation is the arena in which political and administrative needs meet; this provides opportunities for political symbolism, policy innovation and administrative rationality.⁵⁴¹

⁵³⁶ Ibid.

⁵³⁷ Interview with Ahmad Muqowam (n 350).

⁵³⁸ Glyn Davis et al, ‘What Drives Machinery of Government Change? Australia, Canada and the United Kingdom, 1950–1997’ (1999) 77(1) *Public Administration* 7.

⁵³⁹ Ibid.

⁵⁴⁰ Kettl and Fesler (n 222) 84.

⁵⁴¹ Davis and et al (n 538).

Another interviewee, Prasodjo, had a different view. For him, the Indonesian government must simplify its structures and reduce its agencies, since many functions of the central government have been taken over by the local governments, following *the Local Government Act 23/2014*. He stated:

Of course this is a big problem [I saw] as I looked at the structure of our central government. Instead of getting leaner, it gets too big. Because we have decided to decentralise the government. According to *the Local Government Act*, our government should adjust its functions according to our nation's decentralisation design. To me, there will be huge inefficiencies if the central government does not comply with our decentralisation principles, such as overlaps and higher operational costs, as each ministry may have to develop unnecessary programs. The impact of this problem is daunting, not only [in that] the expected performance of organisations become unachievable, because the organisations are unfit to achieve their targets, but also because of duplications in functions, programs and activities and allowances that need to be paid to the officials.⁵⁴²

Therefore, the Indonesian government still needs to reduce the size of its bureaucracy to improve efficiency and establish a good linkage of business processes between the executive bodies. The next section discusses the business process in the bureaucracy of the Indonesian central government.

5.4 Business Processes

Widjinarko posited that sectoral egos among governmental institutions are the reason why many ministries and agencies have tried to pass legislation in their respective areas to protect their organisations.⁵⁴³ Many of them are already mentioned in the legislation and, as such, complicate the reformation. The bureaucracy becomes swollen because of pragmatic interests and each sector of administration insists on establishing an independent organisation.⁵⁴⁴ As the legislations were fragmented, so were the business processes of the government.

⁵⁴² Interview with Eko Prasodjo (n 351); also see *Undang-Undang 23/2014 tentang Pemerintahan Daerah* [Act 23/2014 on the Local Governments].

⁵⁴³ Interview with Teguh Widjinarko (n 348).

⁵⁴⁴ Interview with Eko Prasodjo (n 351).

Erni Murniasih, a Project Manager of KOMPAK, articulated the extent of fragmentation inside the Indonesian bureaucracy. She gave an example of dealing with the rural issues. Murniasih said that too many ministries were involved in the implementation of *the Villages Law/The Act 6/2014 on Villages (Undang-undang 6/2014 tentang Desa)*:

Q: So you mean too many ministries or agencies to handle one particular issue?

A: Exactly; as an example, see how we handle the issue of our rural area, to implement the Rural Laws. From its financial aspect, the formulation of the rural fund is the responsibility of the Ministry of Finance. The determination of the allocation of those funds is the Ministry of Rural Areas [responsibility], its assistance facility is held by the Kemendagri (Ministry of Home Affairs). We also had the Coordinating Ministry of Human and Culture Development as the orchestra leader of those activities. Hence, the field is too crowded. We have so many institutions working on a single issue and sometimes we also had an institution [that] didn't do anything to solve the problem.⁵⁴⁵

It is evidenced that it is too crowded for one issue to be handled by too many ministries. The government is expected to satisfy the public by delivering services. Therefore, the public should not be confused by an intricate process by multiple institutions for a single service. Abnur emphasises the importance of establishing a proper business process to reduce duplications.⁵⁴⁶ There should be a distinct function of each institution because, at the macro level, the organisations might no longer be flexible as the laws restrict reorganisation. Since legislation is a significant impediment to establishing a good business process, establishing an efficient process requires awareness from legislators on the importance of streamlining processes.

Establishing business processes is establishing linkage and synergy of activities. Hence, reducing fragmentations of the government. For example, the National Search and Rescue Agency (Badan SAR Nasional, or BASARNAS), the Ministry of Social Affairs and the National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana, or BNPB) are working in the same area of disaster management and are all responsible for providing emergency services in the event of

⁵⁴⁵ Interview with Erni Murniasih (n 349).

⁵⁴⁶ Interview with Asman Abnur (n 352).

a natural disaster. Working in the same area of governance, they need a sufficient business process mechanism to coordinate and cooperate effectively.

Fragmented administration is a disadvantage and creates difficulties for the bureaucracy. The other example here concerns environmental issues. The graphic below illustrates the fragmentation of the government in addressing the environmental problem.



Figure 5-2 Ministries and Agencies Addressing Environmental Issues⁵⁴⁷

Figure 5-1 shows that it takes ten ministries and agencies to address environmental issues. The crowded stakeholders may complicate the coordination, resulting in disharmony and an inefficient processes. A similar situation occurs in other areas of governance and potentially leads to red tape. Another example is the effort to eradicate poverty, which involves the National Planning Agency (Bappenas), the Ministry of

⁵⁴⁷ Ministry of Administrative and Bureaucratic Reform (n 5).

National Development Planning, the National Agency for Acceleration of Poverty Elimination, the Ministry of Social Welfare and others.

Murniasih's organisation (KOMPAK) is a joint program between the Australian and Indonesian governments for the issue of social developments in Indonesia, such as combatting poverty. Murniasih said that in working with the issue of poverty eradication, KOMPAK has to deal with too many ministries and agencies. She stated:

[F]or poverty elimination, we had the Bappenas, the TNP2K (the National Team for Acceleration of Poverty Elimination). My organisation is working on development issues, we have so many doors only for one particular issue, like for planning of basic services we have to deal with Bappenas, for the Ministry of Finance if it is related to budget management, Ministry of Home Affairs for the regulations, and with the Ministry of Social Affairs for combating poverty activity that is related to inaccessibility of basic services.⁵⁴⁸

Having too many institutions addressing the same issue will have significant implications for the budget and the performance of the government. Moreover, Adi Budiarto, the Chief of Transformation Office, Ministry of Finance (MoF), explained that reorganisation efforts were constrained by the interest to secure positions for top bureaucrats.⁵⁴⁹ Because of this interest, many unnecessary directorate generals were still preserved.⁵⁵⁰

Budiarto stated that one of the main reasons for conducting reform, particularly in his institution (MoF), was to reduce 'silo-mentality'—a mentality resulting from sectoral ego, or a belief that one organisation is superior to others and therefore being reluctant to share responsibilities.⁵⁵¹ Silo-mentality has driven most directorate generals at the MoF to pass regulations to protect their power and organisation.⁵⁵² It leads to a mindset that refuses teamwork with other units in policy-making, rejecting the idea that decision-making can be intercorrelated between departments. These situations lead to

⁵⁴⁸ Interview with Erni Murniasih (n 349).

⁵⁴⁹ Interview with Adi Budiarto (n 356).

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

⁵⁵² Ibid.

difficulties in conducting reorganisation. The next section discusses the procedure and process required to conduct reorganisation.

5.5 Procedures and Processes for Organisational Change

On behalf of the President, the MoABR is currently deciding the restructuring of directorate generals, bureaus, directorates and other smaller units within a ministry or agency. The power for creating a ministry or an agency, as well as dismantling it, is held by the President. The President usually reorganises his machinery after receiving consideration from the MoABR. However, neither the president nor the MoABR is able to dictate reorganisation of a statutorily established body.

Ideally, reorganising any agency should be free from any political intrusion. According to the 1945 Constitution, the president held the power of government. However, statutorily creating agencies has restricted the constitutional, prerogative right of the president in managing his government and has undermined the presidential system adopted by the 1945 Constitution.

When a statute creates a structure within the government, reorganising it can be challenging. A small unit within a ministry can be worse if the nomenclature and the function of this unit are mentioned in a sectoral statute. This may prevent reorganisation measures for its relevant ministry, without amending the law related to this unit. Yuwantari postulated that such a ‘mother ministry’ cannot be restructured:

[I]f a structure is statutorily established, it is difficult for us [to restructure]. As an example, in disbanding a ministry that has a small unit of UPT [technical service delivery unit], ideally, this UPT should also be disbanded as its mother ministry. However, this may not be easy if such unit is mentioned in a statute. When a mandate of a ministry or its relevant elements is mentioned in a statute, the first thing that we need to do in reorganising them is to amend the terms in legislation that relevant to their organisation.⁵⁵³

Because legislations mentioned the nomenclature of a particular ministry or agency, the bureaucracy has become fragmented. Reorganisation must be directed to simplify business processes and make the government less fragmented. The fragmented

⁵⁵³ Interview with Vera Yuwantari (n 346).

processes show that there is still a long way for the Indonesian government to go to reach a successful reform. As mentioned in Chapter 4, the Indonesian score in the EODB shows this. The Indonesian EODB score and rank is far below its neighbouring countries, including Singapore, Malaysia and Australia.

Moreover, the Indonesian competitiveness index in 2019 is sitting at a rank of 50th out of 140 countries—five spots lower than its 45th in the previous year. This result is far below Singapore (ranked 1st out of 140 countries) and Malaysia (ranked 7th).⁵⁵⁴ Indonesia still needs to catch up and take lessons from other countries to improve its bureaucracy and increase its competitiveness. The next section of this thesis discusses reorganisation in other countries and the lessons learned, which could be used for Indonesia to reform its bureaucracy.

5.6 Reorganisation in Other Countries: Lessons Learned for Indonesia

Every country has its own characteristics of reform, problems and distinctive experiences. There is no one solution fits all across countries, but countries can learn from others' experiences and use reform to build institutions that are adaptable to changes and new challenges. This section will examine the experiences of Singapore, Australia and the United States in building their government machinery. Singapore and Australia were selected for their proximity to Indonesia and their different governance characteristics. However, it is also important for this section to examine reform experience from a country that has similar democratic characteristics with Indonesia, which follows the presidential system; this is why this section also discusses the USA's experience. As developed countries, public governance in these three countries are more advanced and, as such, it is beneficial to take their reform experience into account.

5.6.1 Singapore

The Economist Magazine views Singapore as an 'exceptional' country, as it is the world's only fully functioning city-state and one of the world's richest countries,

⁵⁵⁴ World Economic Forum, 'Global Competitiveness Report 2019' (2019) <http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf>.

which maintains its status as a major global hub for commerce, finance, shipping and travel.⁵⁵⁵ One of the key elements of Singapore's success is the monopoly of state power by the People's Action Party (PAP), which has been ruling for more than 50 years.⁵⁵⁶ Since the birth of Singapore as a country, right up to the present date, the PAP had a monopoly in parliament that reached its peak from the 1960s to the 1980s, where all seats of parliament went to PAP, leaving not even a single seat for the opposition.⁵⁵⁷

For more than five decades, PAP held the power of government and was freed from any political demand and opposition. As such, they had a 'freehand' in policy-making, emphasising the concern for rationality in policy-making.⁵⁵⁸ The legislative dominance of PAP provided a solid base to rule and establish state autonomy for the government. The parliament has been more of an echo-chamber than a check and balance to the executive power and no opposition candidates were able to obtain a seat in Parliament until 1981.⁵⁵⁹

An effective state apparatus and efficient bureaucracy are the essential and critical elements for the development of a nation. One of the unique characteristics under the PAP rule is that bureaucrats have obtained not only administrative support as professionals in their areas, but also political support, with many bureaucrats changing over to become members of parliament and PAP. Iwasaki argued that the solid power of the executive in Singapore had become the main driving factor in Singapore's growth.⁵⁶⁰ The state autonomy provided by the PAP has enabled the bureaucrats to discharge their duties faithfully. Singapore has succeeded in building a system that virtually has no official corruption, and the government has remained clean and efficient for more than 50 years.⁵⁶¹

The organisation of administration in Singapore can be divided into two types according to their organisational characteristics, namely task and function. The first type is the 'ministry', which has the function to maintain an ordered economic and

⁵⁵⁵ 'The Singapore Exception', *The Economist* (London, 18 July 2015).

⁵⁵⁶ Yasutami Shimomura (ed), *The Role of Governance in Asia* (Institute of Southeast Asian Studies, 2003) 351.

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

⁵⁵⁹ 'The Singapore Exception' (n 555).

⁵⁶⁰ Shimomura (n 556) 352.

⁵⁶¹ 'The Singapore Exception' (n 555).

social life.⁵⁶² The second type is the ‘statutory board’, established by a special law to supplement the role of the ministries or to undertake a particular task as a proxy of the ministries.⁵⁶³ Unlike ministries, which come under the supervision of parliament by law, statutory boards have the special privilege of being free from the parliament’s supervision.⁵⁶⁴ The purpose of such privilege is to give them the flexibility to conduct their tasks efficiently.⁵⁶⁵ Statutory boards have been sharing tasks with the ministries and, in certain areas, ministries have left tasks completely to the statutory boards.⁵⁶⁶ These statutory boards are similar to the LPNKs of the Indonesian government, except that LPNKs are subject to checks and balances from parliament.

As of 2019, there were 15 ministries and 56 statutory boards in Singapore.⁵⁶⁷ Statutory boards are public institutions established under legislation, which have a focused mission.⁵⁶⁸ While statutory boards need to report to their parent ministries, they have more flexibility and are more independent than ministries in managing financial and human resources. Statutory boards generally have more freedom than their parent ministries to employ the necessary human expertise and use financial resources to implement projects and programs.⁵⁶⁹ Further, they are administered through autonomous boards that include representatives from the public and private sectors.⁵⁷⁰ Over the years, many specialised statutory boards were established to implement vital national goals—from empowering small businesses to delivering special education for arts and environmental protection. The first statutory boards created were the Housing Development Board in 1960 and the Economic Development Board in 1961.⁵⁷¹

Structures and systems are sometimes seen as obstacles to reform. Hence, governments often opted to adopt only incremental changes that can be implemented within existing structures. However, Singapore’s experiences in reform show how innovations in organisational structures are important to implement policy initiatives. To improve its

⁵⁶² Shimomura (n 556) 353.

⁵⁶³ ‘The Singapore Exception’ (n 555).

⁵⁶⁴ Shimomura (n 556) 353.

⁵⁶⁵ Neo (n 169) 412.

⁵⁶⁶ *Ibid* 411.

⁵⁶⁷ Singapore Government, ‘Singapore Government Directory’ <<https://www.gov.sg/sgdi/ministries>>; Singapore Government, ‘SGDI’ <<https://www.gov.sg/sgdi/statutory-boards>>.

⁵⁶⁸ Neo (n 169) 411.

⁵⁶⁹ *Ibid*.

⁵⁷⁰ *Ibid*.

⁵⁷¹ *Ibid* 412.

public sector, Singapore established two types of structures, namely vertical and horizontal structures.⁵⁷² The typical vertical structure includes organisational design, such as a ministry or a statutory board. Such type of organisation tends to be permanent for a long time and intended to complete its focused tasks within a single ministry or agency. Vertical structures are hierarchically organised for implementing policies and programs.⁵⁷³ In contrast, the horizontal structures involved representatives from various institutions, whose thoughts and expertise were needed for shared issues over a period, and were disbanded when the program was completed—as ad hoc or temporary institutions. The horizontal structure has been used for inter-ministry committees or cross-department teams for more complex issues, such as counter-terrorism, strategic issues or security that requires close and constant coordination.

The horizontal structure comprises a network of experts, with goals to develop comprehensive, effective solutions to coordinate the implementation of accepted policy recommendations by various institutions, if necessary. Conversely, the vertical structure would only handle problems within the framework of their domains. This structure is less effective for more complex problems. To give further comparison, Neo details the differences in structural characteristics between the vertical and horizontal structures in the Singapore Government below.⁵⁷⁴

⁵⁷² Ibid 413.

⁵⁷³ Ibid 414.

⁵⁷⁴ Ibid.

Table 5-3 Structural Characteristics in the Singapore Government⁵⁷⁵

Vertical Structure	Horizontal Structure
Permanent	Temporary
Fixed resources	Configurable resources
Focused on its mission	Multi-dimensional perspectives on the issue
Single agency	Multiple agencies
Hierarchical	Network
Implement policy directly	Coordinate implementation across agencies
Fast and efficient	Comprehensive and effective

Similar to Singapore, the Indonesian administration has seen recent developments of horizontal networks, with the formation of various cross-ministries/agencies and ad hoc committees. For the Singapore government, if such horizontal structures are no longer needed, they will be disbanded. This will be different for the case of Indonesia because many ad hoc institutions in Indonesia eventually seek permanent status in the administration by establishing a vertical structure within themselves. With the support of the legislation, many of those ad hoc committees become LNS's in Indonesia, shifting from horizontal to vertical structures.

Reforming the public sector in Singapore is less difficult than in Indonesia, as the PAP holds a majority of seats in the Parliament and the government. There is no political demand from the opposition and the government has the flexibility to implement its reform agenda. In Singapore, disruption to restructuring is minimal. Both Singapore and Indonesia saw many of their government agencies created by legislation. However, as the ruling power in Singapore has a monopoly in the parliament and

⁵⁷⁵ Ibid.

government, reversing the legislation that becomes the legal basis for the creation of an agency is easier than it is in Indonesia.

Singapore can also have a stable government because of the leadership of former Prime Minister Lee Kuan Yew, who held power for more than 30 years. As the Prime Minister from 1959 to 1990, Lee led the country into prosperity and his strong leadership helped to transform Singapore from British post-colonial chaos into one of the world's most prosperous and orderly nations—turning the Southeast Asian city-state into one of the ‘economic tigers’ of Asia.⁵⁷⁶ Retiring from the Prime Ministry, Lee became a senior advisor in the cabinets of two of his successors.⁵⁷⁷ He maintained his influence and advised the government on issues from sustaining political stability and economic growth to maintaining foreign affairs, until he resigned in 2011. Overall, he spent 52 years in the government leading Singapore to rise as a major global financial and trade hub, with the third-highest GDP per capita ranking in the world.⁵⁷⁸

Its incorruptible government also underscores Singapore's success story. Singapore's national leadership is consistently aware that incorruptible government is the precondition for the establishment of a good government to encourage economic growth. Singapore is one of the cleanest top global bureaucracies. According to Transparency International, Singapore's 2018 Corruption Perception Index is ranked 3rd out of 180 countries, with a score of 85 out of 100.⁵⁷⁹ In 2019, Singapore was listed as the most competitive country in the world, ranked 1st out of 140 countries.⁵⁸⁰ Singapore succeeded in preserving the integrity of its bureaucrats, which makes them among the cleanest public sector in the world. The Singapore government was widely regarded as honest and efficient and yet overbearing and patronising (particularly in the era of Lee Kuan Yew). With the help of the strictest laws on corruption, drugs, gun

⁵⁷⁶ ‘Lee Kuan Yew, Who Led Singapore into Prosperity over 30-year Rule, Dies at 91’ *The Washington Post* (online, 22 March 2015) < https://www.washingtonpost.com/world/asia_pacific/lee-kuan-yew-who-led-singapore-into-prosperity-over-30-year-rule-dies-at-91/2015/03/22/00f7ccbe-d0d4-11e4-a62f-ee745911a4ff_story.html>.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Transparency International, ‘Singapore—Corruption Perception Index 2018’ <<https://www.transparency.org/country/SGP>>.

⁵⁸⁰ World Economic Forum (n 554).

control and various aspects of public life, Singapore has become a tidy and law-abiding country.⁵⁸¹

5.6.2 Australia

The most common departmental changes in the Australian Westminster-style system are in the form of incremental adjustment—regular but minor changes to keep the machinery broadly consistent with the activities and policy priorities of the government.⁵⁸² The only radical changes in the architecture of the national government in Australia were conducted during Prime Minister Gough Whitlam’s government in 1972–1975. Over three years of his government, the total number of departments rose sharply from 27 to 37 and then fell again to 28 at the end of his prime ministership and, out of the original 27 departments Whitlam inherited in 1972, only seven still operated at the end of his term.⁵⁸³

During the Whitlam era, Australia also experienced a constitutional crisis that saw the government dismissed by the Governor-General, Sir John Kerr.⁵⁸⁴ After an appropriations crisis in Parliament in 1974 and 1975, the Governor-General invoked his power under Section 62 of the Australian Constitution and dismissed the Whitlam Government in 1975, marking the climax of probably the most significant political crisis in Australian history.⁵⁸⁵ The crisis also affirmed the fundamental position of the Senate in the legislative structure, following the reasons for which the Governor-General decommissioned the Whitlam government.⁵⁸⁶ In October and November 1975, Whitlam’s government did not have a majority in the Senate. On several occasions, the Senate passed a motion to defer Appropriation Bills, which had been passed by the House of Representatives ‘until the Government agrees to submit itself to the judgement of people’.⁵⁸⁷ The Governor-General Sir John Kerr withdrew the commission of Prime Minister Gough Whitlam following the rejection of the Appropriation Bills by the Senate. He then commissioned the opposition leader

⁵⁸¹ The Washington Post (n 576).

⁵⁸² Davis and et al. (n 538) 29.

⁵⁸³ Ibid.

⁵⁸⁴ Parliament of Australia, ‘The Crisis of 1974–75’ (<https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/platparl/c04>).

⁵⁸⁵ Gabriël Moens, John Trone and Richard Darrell Lumb, *The Constitution of the Commonwealth of Australia Annotated* (LexisNexis Butterworths, 9th ed, 2016) 233–4.

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid.

(Malcolm Fraser) as the new Prime Minister to form a caretaker government on the guarantee that supply will be passed and that the dissolution of both houses would be recommended. After the Senate passed the Appropriation Bills, the new Prime Minister called for a double dissolution—the Governor-General then signed the proclamation of dissolution and elections were held.⁵⁸⁸

The machinery of government changes in Australia was strongly influenced by the result of elections and its new prime ministers. The development of government machinery in Australia is heavily based on considerations made by prime ministers, Davis et al. state:

For prime ministers, the machinery of government questions have both policy and political content. The architecture of ministries is an opportunity to express priorities and to meet policy challenges with new organisational arrangements. Important initiatives can be given dedicated resources, while administrative obstacles are removed. New agencies may be created, old ones scattered or reconfigured. Though government machinery is but a means to an end, machinery changes often reveal a hope that through better structures, the more successful policy might flow.

In establishing administrative arrangements, prime ministers also make political choices. The distribution of assigned responsibilities among ministers rewards some and eclipses others. The quantum and significance of responsibilities help determine influence within the cabinet, public profile and the prospects for further advancement. Some prime ministers prefer a small, coherent group at the centre, and consolidate portfolios around a few individuals, investing each minister with significant span and discretion. Others favour a more compartmentalised government with many ministers, each responsible for a relatively narrow slice of government activity. In either case, apparently neutral administrative arrangements reflect a political judgment about the operation of the cabinet, the comparative importance of ministers and the preferred operating style of the prime ministers. Such machinery choices have consequences beyond the cabinet room. Administrative arrangements also determine the balance of bureaucratic power—

⁵⁸⁸ Ibid 244.

between ministers and officials, between central agencies and line departments, and among line departments.⁵⁸⁹

The Australian government's bodies are diverse and classification is not always straightforward.⁵⁹⁰ Its organisation is classified into several portfolios and 12 types of bodies. A portfolio is a minister's area of responsibility as a member of Cabinet. Within each portfolio there are one or more departments, agencies, government appointed boards and/or other boards and structures.⁵⁹¹ Below are the organisations of the Australian Government, based on the Administrative Arrangement Order by Prime Minister Scott Morrison that commenced from 1 September 2019.

Table 5-4 Australian Government Organisations Classified by Portfolios⁵⁹²

No	Portfolios/Departments	Ministerial Posts/Responsible Ministers
1	Agriculture (Department of Agriculture)	Minister of Agriculture Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management Assistant Minister for Forestry and Fisheries
2	Attorney General's (Attorney General's Department)	Attorney General Minister for Industrial Relations
3	Communications and the Arts (Department of Communications and the Arts)	Minister for Communications, Cyber Safety, and the Arts Minister for Regional Services, Decentralisation and Local Government
4	Defence (Department of Defence)	Minister of Defence Assistant Defence Minister Minister for Veteran and Defence Personnel Minister for Defence Industry
5	Education (Department of Education)	Minister for Education

⁵⁸⁹ Davis and et al. (n 538) 8.

⁵⁹⁰ Australian Government, 'Australian Government Organisations Register—Types of Bodies' <<https://www.finance.gov.au/government/governance/australian-government-organisations-register/australian-government-organisations-register-types-bodies>>. ('Types of Bodies')

⁵⁹¹ Australian Government, 'Australian Government Directory—Portfolios' <<https://www.directory.gov.au/portfolios>>.

⁵⁹² See *ibid*; Australian Government, 'Administrative Arrangements Order—29/5/2019', *Federal Register of Legislation* <<https://www.legislation.gov.au/Details/C2019Q00007>>.

No	Portfolios/Departments	Ministerial Posts/Responsible Ministers
6	Employment, Skills, Small and Family Business (Department of Employment, Skills, Small and Family Business)	Minister for Employment, Skills, Small and Family Business Assistant Minister for Vocational Education, Training, and Apprenticeships
7	Environment and Energy (Department of the Environment and Energy)	Minister for Energy and Emissions Reduction Minister for the Environment Assistant Minister for Waste Reduction and Environmental Management
8	Finance (Department of Finance)	Minister for Finance Assistant Minister for Finance, Charities and Electoral Matters
9	Foreign Affairs and Trade (Department of Foreign Affairs and Trade)	Minister for Foreign Affairs and Minister for Women Minister for Trade, Tourism, and Investment Assistant Defence Minister and Minister for International Development and the Pacific
10	Health (Department of Health)	Minister for Health Minister for Aged Care and Senior Australians Minister for Youth and Sport Minister for Regional Services, Local Government and Decentralisation
11	Minister for Home Affairs (Department of Home Affairs)	Minister for Home Affairs Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs Assistant Minister for Customs, Community Safety and Multicultural Affairs
12	Industry, Innovation and Science (Department of Industry, Innovation and Science)	Minister for Industry, Science and Technology Minister for Resources and Northern Australia

No	Portfolios/Departments	Ministerial Posts/Responsible Ministers
13	Infrastructure, Transport, Cities and Regional Development (Department of Infrastructure, Transport, Cities and Regional Development)	Deputy PM and Minister for Infrastructure, Transport and Regional Development Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management Minister for Population, Cities and Urban Infrastructure Minister for Regional Services, Decentralisation and Local Government Assistant Minister for Road Safety and Freight Transport Assistant Minister to the Deputy Prime Minister Assistant Minister for Regional Development and Territories
14	Parliamentary Departments Department of Parliamentary Services Department of the House of Representatives Department of the Senate Parliamentary Budget Office	N/A
15	Prime Minister and Cabinet (Department of the Prime Minister and Cabinet)	Prime Minister Minister for the Public Service Minister for Women Minister Assisting the Prime Minister for the Public Service and Cabinet Minister for Indigenous Australians Assistant Minister to the Prime Minister and Cabinet
16	Services Australia (Part of the Social Services Portfolio)	Minister for Government Services

No	Portfolios/Departments	Ministerial Posts/Responsible Ministers
17	Social Services (Department of Social Services)	Minister for Families and Social Services Minister for the National Disability Insurance Scheme Minister for Government Services Assistant Minister for Children and Families Assistant Minister for Community Housing, Homelessness and Community Services
18	Treasury (Department of the Treasury)	Treasurer Minister for Population, Cities and Urban Infrastructure Assistant Treasurer Assistant Minister for Superannuation, Financial Services & Financial Technology Assistant Minister for Finance, Charities and Electoral Matters
19	Veterans' Affairs (part of the Defence Portfolio)—Department of Veterans' Affairs	Minister for Veterans and Defence Personnel

Table 5-5 Australian Government Organisations—Types of Bodies⁵⁹³

Principal Australian Government Entity	Secondary Australian Government Entity	Other Entities
Non-Corporate Commonwealth Entity	Advisory Body – Policy and Stakeholder Consultation	Subsidiaries of Corporate Commonwealth Entities and Commonwealth Companies
Corporate Commonwealth Company	Statutory Office Holders, Offices and Committees	Joint Ventures, Partnerships and Other Companies
	Non-Statutory – Function with Separate Branding	National Law Bodies
	Ministerial Councils and related bodies, including those established by the Council of Australian Governments (COAG)	Bodies Linked to the Australian Government through Statutory Contracts, Agreements and Delegations
	Inter-jurisdictional and international bodies	

Restructuring is a constant feature in the Australian administration. It is an attempt to establish priorities, names of departments and their key activities and to establish limitations of governance. However, there are core activities that likely enjoy fewer changes. For instance, the government consistently requires treasury and legal advice and they always have to deal with the issues of defence and foreign affairs.⁵⁹⁴ The departments with the responsibility of these functions are not immune from restructuring, but they have more sustainability and less disruptive change than other institutions.⁵⁹⁵

The role of the prime minister in structural choices is important in Australia. Davis et al. state:

Prime ministers move endlessly across politics, policy, and administration, shaping the core executive to suit their values and operating style. As a consequence it is difficult, and perhaps impossible, to accurately desegregate the motives which inspire any given machinery change. It is in the nature of the prime minister’s task

⁵⁹³ Australian Government, ‘Types of Bodies’ (n 590).

⁵⁹⁴ Davis and et al. (n 538) 41.

⁵⁹⁵ Ibid.

to think across categories rather than within the neat boxes necessary for a viable typology of machinery decisions.⁵⁹⁶

Organisational structure is a point where the administrative and political systems meet. It provides a chance for the government to exercise political symbolism and rationality for both policy innovation and the administrative systems. Therefore, it is not surprising that political arguments for reform are so prominent. An elected prime minister may opt to chase policy objectives rather than deal with the inevitable delays and frustration in a major machinery modification.⁵⁹⁷

In a parliamentary democracy like Australia, changing a statutorily established agency is less complicated than in Indonesia. The process of law-making in Australia is somewhat different from Indonesia, as the prime minister and ministers in Australia come from the ruling government and are Members of Parliament. There is no distinct separation of powers between those of the executive and the legislature like in the Indonesian presidential system. Since the ruling government also holds the majority of parliament, the separation of powers doctrine only applies in respect to the separation of judicial from legislative and executive power.⁵⁹⁸ Hence, passing legislation in Australia is generally easier than in Indonesia, as the executive in Australia is also part of its legislative power. This concept was inherited from the British Westminster tradition that does not separate the executive and legislative powers. Instead, it involves a fusion of these powers, with members of the government required to hold seats in either the House of Representatives or the Senate, with the primary responsibility to be accountable to the house that is elected by the people, the House of Representatives.⁵⁹⁹

Often when departments are rearranged, the career of ministers and their bureaucrats' career becomes uncertain, and therefore, prime ministers must be able to justify their action. However, Davis et al. argue that prime ministers worry more about the pressure outside the government itself, from state or provincial governments, industry, interest groups and community movements.⁶⁰⁰ As such, prime ministers have to respond

⁵⁹⁶ Ibid.

⁵⁹⁷ Ibid.

⁵⁹⁸ Moens, Trone and Lumb (n 585) 14.

⁵⁹⁹ Ibid.

⁶⁰⁰ Davis and et al. (n 538).

incrementally, by calibrating ministerial loads and their responsibilities, creating new agencies, installing key officials in new structural arrangements and negotiating new deals with the lower levels of government.⁶⁰¹ Accordingly, the structural configuration of the government is most likely to change over time, as policies and programs have to adjust to their current political realism.

Finding an organisational principle able to provide a sudden and permanent structural coherence can be a challenge. Hence, it is inevitable for the prime ministers to deal with political, policy and administrative interests manifested in the form of regular structural changes. The organisational arrangements conducted by a prime minister reflects political weight, priorities, administrative pressures and the policy goals of his or her time in office.⁶⁰² The process of administrative arrangements in Australia is different from that in Indonesia. It is increasingly common in Indonesia for legislation to be used as a tool to build the structure of government.

Legislation often contains the terms of establishing a new body to implement the law and addressing its particular issues. However, this may not be the case for Australia, as new legislation in Australia does not necessarily establish a body. Instead, Australia recognises the central role of the prime minister in administrative arrangements. The prime minister is responsible for issuing an ‘Administrative Arrangement Order’, which often includes the matters to be addressed by the departments or the legislation to be administered by the ministers. As the role of prime minister is central in such arrangements, he or she should be able to think across categories to decide the machinery of government.

5.6.3 The United States of America

March and Olson observe that reorganisation decisions in the United States administration had been a source of frustration for presidents.⁶⁰³ The US political system has persistently revived the idea of comprehensive administrative reorganisation and they are heavily influenced by short-term objectives to address the

⁶⁰¹ Ibid.

⁶⁰² Ibid.

⁶⁰³ March and Olson (n 282) 282.

problematic attention of the current government. Hence, many reorganisations have a short-term life as they are based on short-run political decisions.⁶⁰⁴

Like any other modern government, the United States has experienced exceptional growth and changes to its administrative institutions. Many new departments or new agencies have been created; agencies have been merged and their responsibilities changed, as well as the relationship between departments and agencies, or between particular agencies with their customers. March and Olson posit that many of those changes have been produced either by legislation or executive decisions.⁶⁰⁵ Most changes in the government involved a significant amount of money, time and policy development, not only in the United States but also in other modern administrations. March and Olson state:

Such more or less continual, but piecemeal, changes in administrative structures and procedures have been supplemented periodically by more grandiose, and more explicit, efforts to review and reorganise the administrative apparatus of government. These comprehensive reviews of administrative structure and practices have been undertaken by governments of all political persuasions and under a wide variety of political circumstances. They have often involved considerable investment of money, time, and political discussion. They are a characteristic feature of twentieth-century bureaucratic and political life.⁶⁰⁶

The design and control of bureaucracy structure is the main concern of any administration and the effectiveness of policy implementation depends on the effectiveness of administrative organisations. Despite its frequent occurrence, reorganisation in the US federal government cannot be categorised as a routine activity, such as budgeting. Instead, March and Olson argue that reorganisation in the US is more like ‘governance experiments’—it frequently occurs to address similar issues under different conditions, but not frequently enough to be called a routine.⁶⁰⁷

The Constitution of the United States separates powers into legislative, executive and judicial.⁶⁰⁸ Congress holds the legislative power—the Senate and the House of

⁶⁰⁴ Ibid.

⁶⁰⁵ Ibid.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid.

⁶⁰⁸ *United States Constitution*.

Representatives—to make laws.⁶⁰⁹ The executive is responsible for carrying out and enforcing laws; it includes the president, vice president, the cabinet, executive departments, independent agencies and other boards, commissions and committees.⁶¹⁰ The judiciary consists of the Supreme Court and other federal courts; they are responsible for interpreting laws, applying laws to individual cases and deciding if laws violate the Constitution.⁶¹¹ To provide checks and balances between branches of power, the US Constitution stipulates that each branch of power can respond to, or change actions of other branches; for example, the president can veto the laws made by Congress and nominate the heads of executive departments.⁶¹² In contrast, Congress has the power to confirm or reject the president's nominees and can remove the president from office under exceptional conditions.⁶¹³ The Supreme Court has the power to reverse unconstitutional legislation made by Congress.⁶¹⁴

Similar to Indonesia as a presidential system country, the president in the US is the head of state and the leader of the government, as well as the Commander in Chief of the Armed Forces. His vice president and the cabinet members aid the president in managing the government. Cabinet members include the vice president, heads of departments and other high-ranking government officials, as the advisors to the president. The president nominates the Cabinet members and the senate's simple majority must approve them. Federal agencies, departments and other groups conduct the work of the executive and these bodies include:⁶¹⁵

- Executive Office of the President of the United States. They are responsible for communicating the president's message and dealing with the budgeting, security and other high priorities.
- Executive departments. These are the main agencies in the US administration. Fifteen heads of these agencies are also the cabinet members. In addition, sub-agencies are established to conduct specialised tasks in their parent departments.

⁶⁰⁹ Ibid.

⁶¹⁰ USA.gov, 'Branches of the U.S. Government' <<https://www.usa.gov/branches-of-government>>.

⁶¹¹ Ibid.

⁶¹² *United States Constitution*.

⁶¹³ Ibid.

⁶¹⁴ Ibid.

⁶¹⁵ USA.gov (n 610).

- Independent agencies. They are neither the members of the cabinet nor the president's office. Most of these agencies deal with the operation of the government, economy and regulatory control.
- Boards, commissions and committees. These smaller organisations are often created by Congress or the president to play particular functions outside the area of executive departments.
- Quasi-official agencies. These agencies are not officially part of the executive. However, legislation requires them to release certain information of their activities in the federal register—the daily journal of government activities.

Arnold states that ‘when we speak of administration, politics stares us in the face’—it is almost impossible for any administration to avoid politics.⁶¹⁶ Any administration should have a good relationship with politics in the sense that any administrative reform is intended to eliminate venality in politics and bureaucracy. The US president’s political efficacy depends on his ability to manage his administration, but in a system of governance and democracy that relies heavily on checks and balances, the executive is not the only significant decision-maker in government. The government frequently has to deal with Congress in policy-making. Arnold observes that Congress is turning into the enemy of good governance because of their uncertainty and undercuts order, which means that the administration finds it difficult to achieve its political and policy goals.⁶¹⁷ This problem was also raised by the White House budget director during President Barack Obama’s administration—Jack Lew—who said that, although many reorganisations aim to use taxpayers’ money efficiently, politics also play a significant role in reorganisation decisions.⁶¹⁸

Apparently, in reorganising the government, the important role of Congress and its interest group politics cannot be neglected—although reorganisations were conducted to eliminate redundancies and consolidate overlapping functions.⁶¹⁹ In the past decade, reorganisation efforts were actively conducted by Obama’s administration. During the State Union Address in 2011, Obama noted that ‘we cannot win the future with a

⁶¹⁶ Arnold (n 523).

⁶¹⁷ Ibid.

⁶¹⁸ ‘WSJ: Obama’s Call for Gov’t Reorganization to Focus on Trade’, *Dow Jones Institutional News* (online, 28 January 2011) <<https://search.proquest.com/docview/2160023768?accountid=10382>>.

⁶¹⁹ Alan P Balutis, ‘Is President Obama Thinking Outside the Box?’ (2011) 40(2) *Public Manager* 19.

government of the past' and called 'to merge, consolidate, and reorganise federal government in a way that will ... meet the challenges of the twenty-first century'.⁶²⁰ Balutis observes that, to increase its success rate, reorganisation necessitates new behaviours from both Congress and the executive.⁶²¹ These behaviours include getting the enabling legislations right, eliminating corruption, re-engineering when necessary and paying attention to culture and values.⁶²²

March and Olson posit that the rhetoric of reorganisation is dealing with the objective of designing administrative structures that promote the efficiency and effectiveness of bureaucratic hierarchies. It speaks of departments that could be abolished and expenses that can be reduced to make the government more efficient and effective through the application of simple organising principles. Similarly, March and Olson observe:

[S]ince 1949, the reorganisation statute has specified explicitly that reorganisations should be presented and justified in terms of their contribution: (1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business; (2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government; (3) to increase the efficiency of the operations of the Government to the fullest extent practicable; (4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes; (5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or advisory functions thereof as may not be necessary for the efficient conduct of the Government; and (6) to eliminate overlapping and duplication of effort.⁶²³

Reorganisation, however, has to deal with the realpolitik of its time. Reorganisation can be an arena of political battle among contending interests. In the US, such conflicts can be found in many statutes and administrative decisions.⁶²⁴ Because administrative design in the US government is a major political issue, for the reorganisation to be

⁶²⁰ Ibid.

⁶²¹ Ibid.

⁶²² Ibid.

⁶²³ March and Olson (n 282) 283.

⁶²⁴ Ibid.

effective, it must reflect the heterogenous interests of the legislative processes.⁶²⁵ US history recorded occasional political confrontations over reorganisation. One of them was when more than 100 Democrat Congress members deserted the Democrat's President (FD Roosevelt) to reject the 1938 Reorganisation Bill, despite an overwhelming majority of Democrats in Congress.⁶²⁶ Such conflict, however, was mostly avoided with political bargaining among parties involved and the president often avoided using his reorganising power in the face of opposition. Instead, the executive tends to give up its reorganisation agenda to obtain legislative supports for other things.⁶²⁷

US presidents frequently speak of reorganising their administration. Brown noted that US history contains frequent occasions of passing laws as a solution for their societal problems.⁶²⁸ Government organisations were not created in a day and they cannot be reformed in a day, either. The US government has used statutes for reorganising its administration, either to make it more efficient or enlarge its bureaucracy. Brown argues that such action has not been productive for the improvement of the US bureaucratic performance.⁶²⁹ History shows that individual members of Congress and particular committees have the capability and willingness to harness forces to block reform and reject new ideas to improve the bureaucracy. In this regard, Brown states:

This does not mean that Congress should be ignored, however. Quite on the contrary, as events have already shown. What it does suggest is that the basic changes that will undoubtedly be necessary in administrative forms and practices are first and foremost an executive concern, and initiatives should be undertaken at the other end of Pennsylvania Avenue.⁶³⁰

The powerful Congress can be a substantial bump for the administration and the US has seen the effect of a powerful Congress in the 2018–19 government shutdown. In contrast, the government is expected to execute their tasks with or without adequate resources; in fact, they often have to do the undoable tasks. Brown observes that when government organisations fail to meet expectations, it is easy for them to claim that

⁶²⁵ Ibid.

⁶²⁶ Ibid.

⁶²⁷ Ibid.

⁶²⁸ Brown (n 490) 165.

⁶²⁹ Ibid.

⁶³⁰ Ibid.

the other side of power (particularly Congress) has overloaded the system and made them fail.⁶³¹ In this regard, Brown suggests that the executive must have a strong commitment to reform to tackle any stumbling blocks along the way.⁶³² He states:

[B]ureaucracy is not an ordinary or a simple system, simple remedies will not do. Bureaucratic change is a process, not an event. A President seriously committed to improving the performance of government can make substantial progress even with the roadblocks which both friend and foe are sure to place in his way.⁶³³

Reflecting on this, it appears that the US and Indonesia share common difficulties in reform and reorganising their governments. The legislative branch can become a significant power, either to support or block reorganisation efforts. Statutes contribute significantly to bureaucracy enlargement in the two countries. It is no surprise that Indonesia and the US have the same challenges of reform, as both of them are following the presidential system.

5.6.4 Lessons Learned

In Singapore, reform is relatively easier than in Indonesia, as the ruling political party holds the majority of seats in parliament and the government. With almost no opposition in Singapore, disruption to reorganising the government and other policies is minimal. However, the most important lesson that can be taken from this city-state in conducting reform is probably not the overwhelming power of the executive. Singapore has succeeded in consistently preserving the integrity of its bureaucrats, which makes them among the cleanest government in the world. Singapore's public sector is widely regarded as honest and efficient. Therefore, the most important lesson from Singapore for Indonesia is that reform requires a government and its bureaucracy that is free from any form of corruption.

While, from Singapore, Indonesia can learn the importance of a clean bureaucracy and the ability to maintain its integrity, from Australia, Indonesia can learn the importance of strong leadership for building the government. Australia recognises the central role of the prime minister in administrative arrangements. In Indonesia, laws often contain

⁶³¹ Ibid 170.

⁶³² Ibid.

⁶³³ Ibid.

the terms of establishing a new body to implement the law. Conversely, in Australia, a new law does not necessarily establish a body. Instead, the prime minister is responsible for issuing an ‘Administrative Arrangement Order’, which often includes the matters to be addressed by the departments. It also describes legislation to be administered by the ministers. As the role of prime minister is central, he must have the capacity to think across categories to build the government’s machinery.

Reflecting on the US experiences in managing the government, it appears that the US and Indonesia share common difficulties in reorganising their governments. The legislative branch can become a significant power either to support or block reform efforts. Statutes significantly contribute to bureaucracy enlargement in the two countries. It is no surprise that Indonesia and the US have the same challenges of reform, as both of them are following the presidential system. Therefore, learning from the US, Indonesia should build legislation that enables reform, eliminating corruption and paying attention to culture and values within its bureaucracy, so it would be able to change any culture and value that does not support reform. However, simply borrowing the models of other countries to improve the administration system may not necessarily produce the desired outcomes, as reforms must be sensitive to the local context.

5.7 Chapter Summary

Most participants of this study asserted that the size of the government organisation in Indonesia is too large and far from ideal. Some ministries tend to enlarge their directorate generals to expand their power and enable them to utilise a larger budget. Some statutes form a legal base for the creation of new agencies. As legislation is a product of a political process, the shape of bureaucracy is heavily influenced by politics.

However, an efficient and effective organisation cannot be determined by quantity. Even the Indonesian government does not have a formula on how many agencies it should have to run the administration. In spite of this, ‘downsizing the government’ has been used as reform rhetoric in many countries, including in Indonesia. Some answers from the interviews show that the ideal structure is characterised by minimum duplications, less sectoral egos and less fragmented business processes. To align with

these ideas, reorganisation should aim to make the government run better and easily adapt to changes and new challenges.

The Indonesian corruption perception index, the EODB's score and its competitiveness ranking show that Indonesia still needs to improve its bureaucracy. Despite the fact that every county has its own distinctive features of reform, it is still relevant for Indonesia to learn from the experiences of other countries that have reorganised the engines of their governments. Combining lessons from Singapore, Australia and the United States examined in this chapter, successful reform relies on a corruption-free bureaucracy, leadership capacity and support from political framework and legislation. The next chapter of this thesis discusses the political and statutory challenges of reorganisation in Indonesia.

Chapter 6: Political and Statutory Challenges of Reorganisation in Indonesia

6.1 Introduction

Politics and legislation are two essential factors that shape the bureaucracy. Legislation may either support or constrain reorganisation. Statutes itself often reflect the vested interest of relevant political forces that can be contradicted with the need to establish efficient governance.⁶³⁴ If the government does not have sufficient bargaining power to negotiate with surrounding interests in law-making, it may not be able to stop the DPR from including terms to establish new agencies within statutes.⁶³⁵

Reorganisation is constrained by the laws that preserve some ministries and agencies. Executive bodies often rely on legislation to strengthen their power and preserve their existence, by mentioning themselves in their sectoral law.⁶³⁶ Without first amending the law, it is difficult for an institution to be dismantled or to merge with other institutions. Because of these constraints, the president, as the apex of administration, does not have full discretion to manage the administration.

This chapter discusses the political and statutory challenges of reorganisation in Indonesia. The central problems of this thesis are discussed in this chapter. The following section examines the political will on bureaucratic reform. Also discussed in this section is the support of public leaders for reform and the support from both the legislative and the executive. The third section of this chapter discusses the political and legal aspects that shape the governance structure of reform; these include the political motives for reform and legal aspects that shape governance. The fourth section examines the current legal framework for reform in Indonesia. The fifth section examines disharmony between the laws and their implications for policies. This chapter is concluded with a section that summarises its findings.

⁶³⁴ Interview with Asman Abnur (n 352).

⁶³⁵ Ibid.

⁶³⁶ Interview with Rini Widyantini (n 347).

6.2 The Political Will on Bureaucracy Reform

The 1945 Constitution bestows the President with the power to govern the administration, appoint ministers and both create and dismantle ministries and agencies. However, many ministries and agencies are mentioned in their sectoral legislation and statutorily established. Conducting reorganisation for a ministry or agency can be complicated—it may require an amendment of their statutory organisational terms. Reorganisation is not simply a change in administrative measures, but a political process that involves political consensus between the legislative and executive powers. The examination of literature in Chapter 2 indicates that reorganisation will only succeed if all stakeholders support it politically. This section discusses the political will to reform. Specifically, it will consider public leaders' support of reorganisation and the support of both the executive and legislative powers.

6.2.1 The Public Leader's Support

On 14 July 2019, the re-elected President Widodo delivered his speech on 'Visions of Indonesia' to celebrate the confirmation of his second presidential term (2019–2024). In his speech, he said that comprehensive bureaucratic reform is one of the main focuses of his government. It shows that the government is committed and has a 'will' to reform. The president also promises improvement and cultural change to his bureaucracy. He said (translated to English):

We must leave behind our old ways, manners, and customs in managing organisations of the government, either managing institutions or running the government. That which is not effective, we will make it more effective. That which is no efficient, we will make it more efficient.⁶³⁷

Obtaining a commitment to reform from top leadership is a promising start to reform. Similarly, in an interview, Supriyono stated:

⁶³⁷ Kompas.com, 'Pidato Lengkap Visi Indonesia Jokowi' <<https://nasional.kompas.com/read/2019/07/15/06204541/pidato-lengkap-visi-indonesia-jokowi?page=all>>.

Political will should start from the leaders; either at [a] policy, managerial, or operational level.⁶³⁸

Supriyono postulated that reform should start with leadership. He also said that leaders in developing countries, such as Indonesia, have more central positions, compared with those in developed countries:

Q: Professor, in what manner do you think reorganisation should be conducted?

A: In public administration, we need to understand what administration is—how we see the administration from both the organisational and managerial perspectives. Leadership with sufficient managerial skills is important for any decision-making in the administration. This is why, in my opinion, ideally, reform should start from the leadership, and the right leader in the bureaucracy will produce the right subordinates.

Q: You mean reorganisation is secondary to leadership?

A: Yes, but it may be different for developed countries, as their governance is more advanced, any change of leadership will not have a significant impact [on the bureaucracy]. In a developing country like us, the leadership role is critical.⁶³⁹

It will be easier to obtain reform commitment from all elements and layers of the bureaucracy if the top executive leaders have demonstrated sufficient political will to reform.⁶⁴⁰ The minister claims that the Indonesian government is fully committed to refurbishing its bureaucracy.⁶⁴¹ Even President Widodo himself consistently monitors the progress of reform and asks ministries to submit their reform progress every month.⁶⁴² The president also issued a directive to his government, to prevent the use of legislation terms for creating new agencies (see Chapter 4). However, these actions may not be enough to demonstrate a sufficient political will for bureaucracy reform.

Commitment from leadership is an essential requirement for successful reform and the extent of the commitment seen up until now has been questioned. For example,

⁶³⁸ Interview with Bambang Supriyono (n 389).

⁶³⁹ Ibid.

⁶⁴⁰ Ibid.

⁶⁴¹ Interview with Asman Abnur (n 352).

⁶⁴² Interview with Vera Yuwantari (n 346).

Murniasih saw the support from the leaders of every branch of power as plain ‘lip service’:

[F]rom leadership, they said they support bureaucracy reform. However, mostly, it was just lip service or only on paper, without real implementation.⁶⁴³

This ‘lip service’ is demonstrated by the fact that the administration has maintained the creation of unideal administrative postures. Some organisations are still given a large structure for only small roles and functions. Supriyono stated:

[T]he institutions of the public sector in Indonesia tend to build a large structure that has a small function. This is not ideal. Well, to some extent, it may be OK to have a big structure with a small function if it is what we need. As an example, in secretariat units or organisations, they can have a large structure despite [the fact that] their function may not significant for the core activities of a ministry. However, there are ministries that should have more operating cores are not given sufficient operational units. This shows that sometimes the creation of an organisation is not based on the comprehensive assessment of workload and function. The analysis to decide whether we need a new organisation or not should be based on an assessment of the role, function and position. What I see in our country, we tend to establish a big structure with small functions. I can fully understand the reason behind this; in Indonesia, reducing structures is unpopular.⁶⁴⁴

Similarly, the minister implied that public leaders often create an organisation without a proper assessment of the workload and national priorities to justify it:

[W]e often create an organisation without prioritising the work that needs to be done. There is no sufficient planning on workload. Hence, many organisations have no work to do. The workload should come first; this needs to be derived from our national priorities in our president’s visions and missions.⁶⁴⁵

Arianti criticised the lack of support from both the government and parliament and said that their political will to reform was only jargon.⁶⁴⁶ For instance, Commission 2, of the DPR, has called for a re-evaluation of the existence of all executive bodies, to

⁶⁴³ Interview with Erni Murniasih (n 349).

⁶⁴⁴ Interview with Bambang Supriyono (n 389).

⁶⁴⁵ Interview with Asman Abnur (n 352).

⁶⁴⁶ Interview with Diah Arianti (n 382).

determine which agencies need to be disbanded, merged with other institutions or preserved. However, Arianti asserted that most legislation initiated by the DPR contains terms to create new agencies.⁶⁴⁷ Similarly, on the government's side, the President issued a directive to his Cabinet to not enlarge ministerial structures, but not all of his ministries comply with this.⁶⁴⁸ Muqowam also expressed his concern about the political will to reform:

Q: What about the political will from both the executive and legislative power to conduct reform?

A: I do not see sufficient commitment from them. Reform was merely procedural—to fulfil what the President wants and to maintain the popularity of the elites. We still not see the reform [used] as a tool to improve public service. This is why we are not considered a developed country. Our public sector is doing their job only at the level of 'business as usual'. I still [do] not see any strategic innovation to reform our bureaucracy.⁶⁴⁹

All public leaders, in both the executive and legislative, should have the same reform awareness. The government should be able to communicate its reform agenda effectively with the DPR and argue that the creation of a new agency by legislation is a disadvantage for the flexibility of governance. Prasodjo argued that, over the years, bureaucracy reform has gained insufficient political will and that it was just political rhetoric.⁶⁵⁰ He said that the absence of a reform roadmap that has the purpose of streamlining the administration shows the low commitment to reform; the result is that reform is not integrated, but rather, it is fragmented.⁶⁵¹

In a newspaper article, Prasodjo claims that the structure of the Indonesian bureaucracy is 'too hierarchical' and has made the processes required for decision-making and administrative actions too slow and complicated.⁶⁵² Processes are tightened with structural constraints and formal rules. These problems affect the competitiveness of the country. As mentioned in the previous chapter, the government is still struggling

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

⁶⁴⁹ Interview with Ahmad Muqowam (n 350).

⁶⁵⁰ Interview with Eko Prasodjo (n 351).

⁶⁵¹ Ibid.

⁶⁵² Eko Prasodjo, 'Pangkas Eselonisasi Birokrasi' [Cutting the Bureaucratic Echelonisation], *Kompas* (Jakarta, 26 October 2019).

to improve the Indonesian competitiveness index. Instead of improving, Indonesia dropped five positions in 2019, from 45th out of 140 countries in 2018 to 50th in 2019.⁶⁵³ To improve its competitiveness, Indonesia needs to have a dynamic bureaucracy that is highly flexible—in the sense that it easily adapts to societal changes—and highly capable. This highly flexible bureaucracy would be characterised by a simplified business process, a slim organisational structure and a performance-oriented approach. This would mean not only doing the job as usual.

The current, oversized structure requires a large budget. Indonesia needs to slim its administration to reduce the unnecessary budget that is used to manage large organisations, provide facilities to top administrators and run programs and activities that are irrelevant to the needs of the nation.⁶⁵⁴ Even the minister implied that some executive bodies were not needed by the government and that they needed to be dismantled:

I cannot deny that we have several ministries and agencies that we do not need. But again, the politics are playing in here. I do not have to specifically mention [the names of ministries and agencies that need to be abolished].⁶⁵⁵

Organisations are the engine of the government and streamlining the bureaucracy is critical to establishing efficiency, which will eventually lead to the improved effectiveness of the government.⁶⁵⁶ Establishing efficiency would require political will and support from both the executive and legislative branches of power. The next part of this section discusses reform support from both the executive and legislative.

6.2.2 Support from Both Executive and Legislative Powers

Indonesia, with its presidential system, makes a distinct separation between the powers of the executive and the legislature. The DPR, as the Parliament, holds the legislative power and has greater power than the government in creating legislation. The government is not a Member of Parliament. Therefore, although the President's affiliated party and its coalition hold the majority of seats in the DPR, the President

⁶⁵³ World Economic Forum (n 554).

⁶⁵⁴ Prasodjo (n 652).

⁶⁵⁵ Interview with Asman Abnur (n 352).

⁶⁵⁶ Prasodjo (n 652).

may not receive major support from the DPR. In contrast, the parliamentary democracy, or parliamentary systems of government, such as those of the United Kingdom and Australia, follow a different path. In these Westminster system countries, the prime minister and the ministers are both the ruling government and the majority of parliament. Hence, the government's power for law-making in Westminster countries is greater.

To obtain support from the majority of the DPR, the government should take into account how the DPR operates internally, or how the legislators behave within the organs. Individual committees in the DPR make the most decisions on legislation and investigate policy issues and each of the committees has its own internal balance of power among the party caucuses (*fraksi*). However, the coalition's party leader may be incapable of supporting the government consistently because of his weak and incoherent authority over the *fraksi* members in DPR.

It is not surprising, then, that parties of the government's coalition and the party of the President itself are the prominent opposition to the government over legislation. The most glaring examples include in 2014, when the majority of the DPR was against the government regarding a bill that eliminated the direct election of provincial and local government heads,⁶⁵⁷ and in 2017, when the DPR differed with the government over the MD3 bill to revise the structure and role of the MPR, DPR, DPD and DPRD (MD3).⁶⁵⁸ The government's weak bargaining power against the DPR means that it is powerless to filter the DPR's proposals, in their bills, to establish new agencies.⁶⁵⁹ What might appear as the absence of political will to reform the administration might just as well be the absence of bargaining power.

Reflecting on the fact that many laws passed by the DPR contain the establishment of a new agency, Widyantini postulated that the DPR did not support the efforts to slim

⁶⁵⁷ 'Hari Ini UU Pilkada Langsung Disahkan, Begini Kisah Perjalanannya' [Today the Law of the Direct Election of Regional Heads Is Enacted, This Is the Story], *DetikNews* (online, 20 January 2015) <<https://news.detik.com/berita/2808114/hari-ini-uu-pilkada-langsung-disahkan-begini-kisah-perjalanannya>>.

⁶⁵⁸ Yoga Sukmana, 'Ada atau Tak Ada Tanda Tangan Presiden, UU MD3 Tetap Berlaku' [The President Signs or Not, the MD3 Bill Still Becomes a Law], *Kompas* (Online, 21 February 2018) <<https://nasional.kompas.com/read/2018/02/21/14483071/ada-atau-tak-ada-tanda-tangan-presiden-uu-md3-tetap-berlaku>>.

⁶⁵⁹ Interview with Asman Abnur (n 352).

the government and establish efficiency.⁶⁶⁰ Although Commission 2 of the DPR fully supports bureaucracy reform, other commissions in the parliament do not. Widyantini stated:

[T]he hearing processes in the parliament is divided into sectors and each commission handles different sectors. Unfortunately, [there is] no linkage of activities between commissions. When the commission 2 is already of the same view as the government to prevent creating a new agency under a new law, other commissions are still doing it. In my view, there is a major political issue here that requires the government and the legislature to sit together to solve the problem.⁶⁶¹

Without gaining support from all elements of parliament, it is difficult for the government as the executive to reorganise. Reform needs the same level of support from these two branches of power.

In contrast, Kharis suggested that stronger support to reform should come from the government itself, since the government has control over the administration.⁶⁶² He insisted that if the DPR wants to include the terms for the creation of a new institution in a statute, it is because the DPR thinks there is a specific issue that needs to be addressed by a specific new agency.⁶⁶³ In reality, the government may already have the institution to handle the issue and a new agency is often unnecessary. The imbalance of power between the legislature and the executive prevents the government from imposing a filter on establishing new agencies, as proposed by the DPR in their bills. However, Khatarina said that the DPR may agree to not propose a new agency when the government is firm and has a strong argument—mainly if the government can provide evidence that the budget cannot afford more agencies.⁶⁶⁴

The bureaucracy can also contribute to making reform difficult. Top bureaucrats sometimes carry hidden agendas to enlarge their institutions. Khatarina and Prasodjo suspected that many bureaucrats became ‘players’ in the making of new agencies and involved in structural enlargement for their personal or group benefits.⁶⁶⁵ The

⁶⁶⁰ Interview with Rini Widyantini (n 347).

⁶⁶¹ Ibid.

⁶⁶² Interview with Abdul Kharis (n 401).

⁶⁶³ Ibid.

⁶⁶⁴ Interview with Riris Khatarina (n 458).

⁶⁶⁵ Interview with Eko Prasodjo (n 351); Interview with Riris Khatarina (n 458).

establishment of the Civil Service Commission under *the Act 5/2014 on Civil Service* is an example of how top bureaucrats engaged in bloating the bureaucracy by using new legislation. Khatarina expressed that, during the discussion on the bill of this law, representatives of the government directed the DPR to propose the establishment of the Civil Service Commission under this law.⁶⁶⁶ In fact, there was a group of people among the top bureaucrats who wanted the Civil Service Commission to be established so that they could have new positions and power in that agency. However, those bureaucrats did not want to be seen as the initiators for the establishment of that new agency, so they used the hands of the DPR.

The current structure of the Indonesian bureaucracy is still built on the justification of role and function and bureaucrats frequently manipulate these justifications to create new agencies. Reform necessitates bureaucrats who have a sincere commitment to carrying it out. This commitment should start from leadership, because the success of reform is arguably subject to the commitment from the apex of administration and the bureaucracy, such as the president, ministers and top-echelon bureaucrats.⁶⁶⁷

Equalising reform between the DPR and the government is also a significant factor for successful reform. Law that constrains reform should be changed under consensus between the DPR and the government. As stated before, the government has weak powers of negotiation, compared with the persuasive power and influence of the political parties in the DPR.⁶⁶⁸ The majority of respondents interviewed believed that the government's position was inferior to the DPR's in legislation-making, and that this began with the four constitutional amendments in 1999–2002. The amendments infused the DPR with new, democratic legitimacy, gave it new power and changed its relationship with the executive power.

After the amendments, the DPR played an assertive role in appointments to key state institutions, criticised government initiatives and often differed with the government over legislation. Some analysts perceive a much darker political script in the rocky government–DPR relationship, concluding that the government's program was often

⁶⁶⁶ Interview with Riris Khatarina (n 458).

⁶⁶⁷ Ibid.

⁶⁶⁸ Interview with Asman Abnur (n 352).

systematically stymied by an ‘obstructionist parliament.’⁶⁶⁹ The most common explanations for that alleged obstructionism were that DPR members were corrupt, lazy and unproductive, represented their parties rather than the people and were tools of vested interest, opposed to reform.⁶⁷⁰ Another common claim is the parliament was exceeding its constitutional power by interfering with executive decision-making.⁶⁷¹

However, Kharis argued that the position of the executive and the legislative for law-making was equal. Every bill, either from the DPR or the government, is discussed between the DPR and the government, who must reach a joint agreement to make it law. Kharis stated that, in the case of a law that contained instructions for the establishment of a new agency, both the DPR and the government would have had to come to a consensus to establish that particular new agency, through their enactment of that particular law.⁶⁷² Therefore, Kharis claimed, the DPR should not be the only one to blame for the bloating of the bureaucracy.⁶⁷³

If there is a statute instructing the creation of a new agency, the new agency will not be established unless the government has issued the implementing regulation of that law.⁶⁷⁴ Since the execution of legislative products is in the hands of executive power, the government first decides on the creation of a new agency through its instruments of regulations. Therefore, the government has full discretion to establish or to reject the creation of a new agency.⁶⁷⁵

Kharis further articulated that, despite the fact that many laws contained instructions for the creation of new agencies, the government had not issued implementing regulation for those laws and their establishment was still on hold.⁶⁷⁶ For instance, the Law of MPR, DPR, DPD and DPRD (the MD3 Law) carried instructions for the

⁶⁶⁹ ‘DPR Dinilai Sebagai Penghambat Agenda Pendidikan’ [DPR Viewed as an Obstruction of Education Agenda]’ *Sindonews.com* (Online, 1 April 2013) <<https://nasional.sindonews.com/read/733337/15/dpr-dinilai-sebagai-penghambat-agenda-pendidikan-1364816156>>.

⁶⁷⁰ Abraham Utama, ‘Potret Kinerja DPR 2017: Kasus Korupsi, Kepemimpinan, dan Gagal Penuhi Target’ [An Overview of DPR Performance in 2017: Corruption, Leadership Failure, and Unachieved Targets]’ *BBC* (Online, 21 December 2017) <<https://www.bbc.com/indonesia/indonesia-42442235>>.

⁶⁷¹ Interview with Bambang Supriyono (n 389).

⁶⁷² Interview with Abdul Kharis (n 401).

⁶⁷³ *Ibid.*

⁶⁷⁴ *Ibid.*

⁶⁷⁵ *Ibid.*

⁶⁷⁶ *Ibid.*

establishment of the Expertise Council—an executive body to provide expertise and advice for the members of the DPR. However, to date, that council has not been established, since the President has not issued the Presidential Regulation for the organisation and the establishment of the council. Without the implementing regulation issued by the government, any agency stipulated by the law will not be created. However, it is unethical for the government to stall the creation of an agency if the law has instructed it to do so.⁶⁷⁷ If the new agency is considered unnecessary, the government should have pointed that out during the discussion of the bill with the DPR, before the bill became law.

Public leaders should know how to consult with all stakeholders and bring together diverse visions, as well as collaborate to identify priorities, determine objectives, develop strategies and measure results. A clear vision for reform will guide the reform process and help the stakeholders—the bureaucracy, in particular—to have a better understanding of their role in ongoing reform. As the OECD argued, not all change in the process of reform is comfortable, but it can be made acceptable if the goals of reform are clear and widely accepted by the stakeholders.⁶⁷⁸

While reform commitment from the two branches of power is essential, reform commitment should first come from the executive, as they know better the needs of the government.⁶⁷⁹ This is also the reason why bureaucracy reform needs bureaucrats that support reform and it also needs to be supported politically and legally. The next section of this thesis discusses the political and legal aspects that shape the governance structure within the Indonesian bureaucracy.

6.3 Political and Legal Aspects that Shape Governance Structure

6.3.1 Political Motives for Reform

Reorganisation is the essence of bureaucratic reform. Widyantini stated that it could also drive reform in other areas of governance, such as human resource management and budgeting:

⁶⁷⁷ Interview with Riris Khatarina (n 458).

⁶⁷⁸ Organisation for Economic Co-operation and Development (n 438) 40.

⁶⁷⁹ Interview with Riris Khatarina (n 458).

The institution is the locomotive of change. If we have good policies on how to manage institutions, improvement to other areas—such as human resources and budgeting—will follow.⁶⁸⁰

However, politics determines the direction of reform. Political parties use their parliamentary representation to build their oligarchy—reform has the background of rent-seeking behaviours. Political bargaining and its ‘transactions’ often encapsulate the establishment of new agencies under new laws. Sometimes agencies are formed to provide positions for bureaucrats, in return for their helping parties win seats in parliament.⁶⁸¹

Despite its presidential system, the parliament has a strong influence in shaping government organisations. It is almost impossible for politics not to interfere with the administration; most decisions in the executive are controlled or dominated by the influence of legislative power. In the early months of Widodo’s presidency, in 2014, it was difficult for the government to make a move, since it lacked significant support from the majority of the political parties in the DPR. The President had to bargain with the political processes, regardless of his disposition.

The DPR’s interference in administration, in the form of enacting legislation that entails the creation of new agencies, significantly contributes to inflating the bureaucracy. The constitution gave the power to run the government to the president. Therefore, the power to create a new agency should be subject to the president’s discretion. This is why the DPR’s use of legislation to create new agencies under the law is seen as a form of intrusion into executive decision-making.

Many pieces of legislation have made the organisation of particular ministries very large and some legislation even provides for the establishment of small divisions of *Unit Pelayanan Teknis* (UPTs) within a ministry to perform particular tasks, as mentioned in the statute.⁶⁸² The government must increase the DPR’s awareness of the capacity of the existing institution to address the issues and disapprove of the wastefulness of forming new agencies. Yet, Yuwantari argued that new agencies

⁶⁸⁰ Interview with Rini Widyantini (n 347).

⁶⁸¹ Interview with Riris Khatarina (n 458).

⁶⁸² Interview with Vera Yuwantari (n 346).

would still unnecessarily emerge, because the government conforms to the DPR's initiatives to create them:

[I]n every hearing with the Parliament, I am sorry to say that often we accept what they want, then a new agency will be established despite the fact that we do not need it.⁶⁸³

Similarly, the minister's statement below gives a glimpse into why the government does not have strong bargaining power in addressing the DPR:

The government is relatively weak in making negotiations [with the DPR], maybe because some ministers or even the President himself is from a political party, they are indebted to their political party for their position. Let say if the President is from PDIP [currently the largest political party in Indonesia] and *Senayan* [the parliament] is also dominated by PDIP, it will be easy for the PDIP elites to tell the government: "You became a president because of us". Everything we do will be dictated [by the parliament].⁶⁸⁴

Ideally, politics and administration should be two different and separate aspects. However, there is a considerable grey area in running the government. Supriyono argued that politics sometimes comes with costly consequences and the government has to be smart to juggle them.⁶⁸⁵ Any political interference in the administration should be well-managed. If necessary, the government needs to negotiate with political processes in conducting reorganisation, although the ideal condition is that politics should not address the managerial aspect of administration.⁶⁸⁶

Abnur postulated that politics influences every stage of policy-making. For instance, the current government is giving significant attention to infrastructure, but there are politicians in parliament actively asking the government to develop programs for their electoral regions.⁶⁸⁷ Those programs are intended as a means for the politicians in the parliament to fulfil promises to their voters. Since there are so many political interests to be accommodated, the government's focus on developing infrastructure can be

⁶⁸³ Ibid.

⁶⁸⁴ Interview with Asman Abnur (n 352).

⁶⁸⁵ Interview with Bambang Supriyono (n 389).

⁶⁸⁶ Ibid.

⁶⁸⁷ Interview with Asman Abnur (n 352).

disrupted. These kind of interests also constrain reorganisation and other reform agendas.

Fukuoka stated that political motivations were often behind the creation of new agencies in Indonesia and that the growth of these new agencies seems unstoppable.⁶⁸⁸ Often, bills from parliament contain terms to establish new agencies, despite the fact that existing government organisations perform the same roles and responsibilities.⁶⁸⁹ This situation reveals that the commissions within the DPR are not in unison in support of reform, despite the limited national budget for managing the administration.⁶⁹⁰

However, a member of parliament rejected the notion that the establishment of a new agency under a particular law is a form of intervention by the DPR.⁶⁹¹ Kharis argued that it could take months for the DPR to discuss a bill with the government and reach a joint agreement.⁶⁹² The government is already aware of the spirit and the content of that bill. Thus, the establishment of a new agency under a new law should be seen as a mutual desire between the legislative and the executive, although the initial idea to create the new agency came from the DPR.⁶⁹³ He further expressed that discussion of the provisions that create new agencies under particular bills rarely become an intense debate between the DPR and the government.⁶⁹⁴ Often, he said, these provisions were concluded between the DPR and the government without the need for voting—a joint agreement was promptly reached.⁶⁹⁵

Yet, the final decision as to whether a new agency should be created (when the law instructs) is to be decided by the law's implementing regulation that is made and issued by the government. Kharis said that when the DPR insists that a particular agency should address a particular issue, it is not necessarily a new agency.⁶⁹⁶ However, if it is decided that a new agency will be established, he asserts, the DPR may not intend to create a large organisation that will potentially lead to inefficiency.⁶⁹⁷ Therefore,

⁶⁸⁸ Fukuoka (n 6).

⁶⁸⁹ Interview with Diah Arianti (n 382).

⁶⁹⁰ Interview with Rini Widyantini (n 347).

⁶⁹¹ Interview with Abdul Kharis (n 401).

⁶⁹² Ibid.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Ibid.

although politics is an essential factor in shaping the bureaucracy, the intention to reform should start from within the government itself. This action should be started from the government rather than the legislative as it has a thorough comprehension of its structures. The government itself should be able to assess and calculate the size of the agencies needed to complete a particular task efficiently.

In her experience assisting the DPR to conduct lobbies with the government, Khatarina observed that, since the reformation era, almost all bills initiated by the DPR contained the idea to create a new agency, for two main reasons. First, unawareness—the members of the DPR could be unaware of the overlapping consequences of creating a new agency when a current ministry or an agency handles the same issue.⁶⁹⁸ Second, the political factors—the creation of new agencies is misused by parties for political bargaining and to provide top positions for people who helped the party gain the vote during the election.⁶⁹⁹

These practices will continue unless the government firmly rejects the DPR's suggestions to create new agencies when there is no urgency to form them. To do this, the boundaries between politics and bureaucracy need to be clear. However, Abnur argued that the DPR often rejects the idea of separating the bureaucracy from politics and have, in fact, increased their influence in administrative structures, further blurring the boundaries between politics and the bureaucracy.⁷⁰⁰

Reform decisions should not rely on the motive of accommodating rent-seeking, which will make the government less effective and less efficient. Similarly, Supriyono claimed that reform has two sides—good and bad.⁷⁰¹ It can be directed to improve effectivity and efficiency, or be used to accommodate rent-seeking and political bargaining. How legislation is made and applied reflects the real motive of both the executive and legislative to reform. The next section further discusses the legal aspects that shape governance.

⁶⁹⁸ Interview with Riris Khatarina (n 458).

⁶⁹⁹ Ibid.

⁷⁰⁰ Interview with Asman Abnur (n 352).

⁷⁰¹ Interview with Bambang Supriyono (n 389).

6.3.2 Legal Aspects that Shape Governance

Many agencies in Indonesia are established by legislation and the government cannot dissolve these agencies if it would breach the terms of the enabling legislation. If such agencies were dissolved, questions would arise as to how the law would be implemented in the institution's absence. As previously stated, sometimes reorganisation would require a law amendment. For example, *the Act 5/2014 on Civil Service* provides particular power for the National Civil Service Agency (Badan Kepegawaian Negara [BKN]). Article 1 para 21 of *the Act 5/2014* mentions that (translated to English) 'The National Civil Service Agency, hereinafter referred to as BKN is a non-ministerial government agency given the power to nationally develop and manage civil servants as set out by this Act'.⁷⁰²

Generally, *the Act 5/2014* set norms and rules for managing the Indonesian civil service. Article 25 (2) of this statute provides that the BKN receives the delegation of power from the President to conduct civil service management and to oversee and control the implementation of relevant norms, standards and procedures.⁷⁰³ The role, functions and structure of the BKN are extensively set out and detailed in other articles of this statute. For example, Article 26 sets out the role of the BKN in policy-making, while Articles 47, 49, 70, 73 and 127 detail the functions, jobs and power of the BKN in managing civil service in Indonesia.⁷⁰⁴

If the government abolishes the BKN without approval from the DPR (by amending *the Act 5.2014*), questions will arise as to how *the Civil Service Act* will be enforced in the institution's absence. Such a decision would also contravene the terms of legislation. Hence, the decision to abolish the BKN would require *the Civil Service Act* to be either amended or revoked. The process of a law amendment and revocation is equal to passing a new law and as such, it requires another political consensus between the government and the DPR and its process is generally lengthy and complicated.

Another example is *the Investment Act (Act 25/2007)*, which sets norms and rules for investments in Indonesia. Article 28 (1) of this statute gives the Investment

⁷⁰² *Undang-Undang 5/2014 tentang Aparatur Sipil Negara [Act 4/2014 on the Civil Service]*.

⁷⁰³ *Ibid.*

⁷⁰⁴ *Ibid.*

Coordinating Board/Agency (*Badan Koordinasi Penanaman Modal* [BKPM]) the power to manage the investment sector in Indonesia. It states that (translated to English):

In order to coordinate the implementation of the policy and investment services, the Investment Coordinating Board/Agency has the duties and functions as follows:

- a. carry out tasks and coordinate the implementation of policies in the field of investment;
- b. review and propose policies of investments;
- c. set out norms, standards and procedures for investments;
- d. develop opportunities and potential investments in regions by empowering business entities;
- e. establish Indonesian investments map;
- f. promote investments;
- g. increase investment businesses through assistance, such as by encouraging partnership, improving competitiveness, creating a fair competition, and disseminating information of investments;
- h. resolve blockade of investments and provide consultations for investors with regards to the issues of investment;
- i. coordinate domestic investors to invest abroad outside the territory of Indonesia; and
- j. coordinate and conduct integrated one door investment services.⁷⁰⁵

The Investment Act sets out the role of the BKPM to manage and provide licensing of investment in Indonesia. Other provisions related to the role and power of the BKPM are to oversee and manage investments stipulated in Articles 15, 23 (2), 23 (4), 27 and 29 of *the Investment Act*. Similar to the BKN, the government cannot dissolve the BKPM without changing *the Investment Act* with the DPR. Dissolution of the BKPM without amending *the Investment Act* would contravene the terms of that statute. This dissolution requires approval from the parliament in the form of law changes or revocation.

This condition may apply to hundreds of ministries/agencies that are established or mentioned in statutes. This section will not go into detail of each article and piece of

⁷⁰⁵ *Undang-Undang 25/2007 tentang Penanaman Modal* [Act 25/2007 on the Investment].

legislation, nor the role and function of each ministry and agency in each piece of legislation. The majority of the 34 ministries are mentioned in their sectoral statutes. Additionally, 15 out of 29 non-ministerial agencies (LPNK) are statutorily established and 76 out of 103 independent agencies (LNS) are statutorily established. The list below provides an overview of each ministry and agency and the laws related to their organisation and establishment:

Table 6-1 Ministries and Agencies Mentioned in Sectoral Statutes

No.	Name of Institution	Relevant Statutes
<u>Ministries</u>		
1	Ministry of Defence	<i>Civil Reserve Act 56/1999, Defence Act 3/2002, and Defence Industry Act 16/2012</i>
2	Ministry of Foreign Affairs	<i>International Relations Act 37/1999 and International Agreements Act 24/2000</i>
3	Ministry of Home Affairs	<i>Local Governments Act 23/2014, Regional Elections Act 8/2015</i>
4	Ministry of Administrative and Bureaucratic Reform	<i>Public Service Act 25/2009, Civil Service Act 5/2014, Administrative Procedures Act 30/2014</i>
5	Ministry of Health	<i>Public Health Act 36/2009 and Hospital Act 44/2009</i>
6	Ministry of Energy and Mineral Resources	<i>Oil and Gas Act 22/2001, Electricity Act 30/2009, Geothermal Act 27/2003, Energy Act 30/2007, and Minerals and Coal Act 4/2009</i>
7	Ministry of Science, Research, and Higher Education	<i>National System on the Research, Development, and Implementation of Science and Technology Act 18/2002, Industry Design Act 31/2000, Higher Education Act 12/2012</i>
8	Ministry of Women Empowerment and Child Protection	<i>Child Protection Act 23/2012 and 35/2014, Domestic Violence Abolition Act 23/2004</i>
9	Ministry of Cooperation and Small to Medium Enterprises	<i>Small and Medium Enterprise Act 20/2008 and Micro Financial Institutions Act 01/2013</i>
10	Ministry of Laws and Human Rights	<i>Immigration Act 6/2011, Law Making Procedures Act 12/2011, Patent Act</i>

No.	Name of Institution	Relevant Statutes
		<i>14/2001, Copyright Act 28/2014, and other laws</i>
11	Ministry of Forestry and Environment	<i>Environmental Protection and Management Act 32/2009, Forestry Act 41/1999</i>
12	Ministry of Workforce	<i>Labour Act 13/2003, Industrial Relation Resolution Act 2/2004, and Unions Act 21/2000</i>
13	Ministry of Youth and Sports	<i>National Sports System Act 3/2005, Youth Act 40/2009, Scouts Act 12/2010</i>
14	Ministry of Trade	<i>Trade Act 7/2014</i>
15	Ministry of Transport	<i>Aviation Act 1/2009, Shipping Act 17/2008, Road Traffic and Transport Act 22/2009, and Railways Act 13/1992</i>
16	Ministry of Industry	<i>Industry Act 3/2014</i>
17	Ministry of Public Works and Housing	<i>Road Traffic and Transport Act 22/2009, Housing and Residential Act 1/2011, Irrigation Act 11/1974, and Public Roads Act 38/2004</i>
18	Ministry of Social Welfare	<i>Poverty Management Act 13/2012, Social Conflict Resolution Act 7/2012, and Social Welfare Act 11/2009</i>
19	Ministry of Agriculture	<i>Food Stock Management Act 18/2012, Agriculture Land Protection Act 41/2009, Horticulture Act 13/2010, Plant's Varieties Protection Act 29/2000, Farming and Livestock Health Act 18/2009, Quarantine Act 16/1992</i>
20	Ministry of Marine Affairs and Fisheries	<i>Coastal Areas and Small Islands Management Act 27/2007, Quarantine Act 16/1992, and Shipping Act 17/2008</i>
<u>Non-ministerial Agencies</u>		
1	Civil Service Agency	<i>Civil Servants Act 5/2014</i>
2	National Population and Family Planning Board	<i>Population and Family Development Act 52/2009</i>
3	Investment Coordinating Board	<i>Investment Act 25/2007</i>

No.	Name of Institution	Relevant Statutes
4	Geospatial Information Agency	<i>Geospatial Information Act 4/2011</i>
5	National Narcotic Agency	<i>Narcotic Act 35/2009</i>
6	National Disaster Management Agency	<i>Disaster Management Act 24/2007</i>
7	Nuclear Energy Regulatory Agency	<i>Nuclear Energy Act 10/1997</i>
8	Nuclear Energy Agency	<i>Nuclear Energy Act 10/1997</i>
9	Agency for the Placement and Protection of Indonesian Migrant Workers	<i>Protection of Indonesian Migrant Workers Act 39/2004</i>
10	National Disaster Management Agency	<i>Disaster Management Act 24/2007)</i>
11	National Development Planning Agency	<i>National Development Planning System Act 25/2004</i>
12	Statistics Agency	<i>Statistics Act 16/1997</i>
13	National Standardisation Agency	<i>Standardisation Act 20/2014</i>
14	National Archive Agency	<i>Archive Act 43/2009</i>
15	National Institute of Public Administration	<i>Civil Servants Act 5/2014</i>
16	National Library	<i>Library Act 43/2007</i>
<u>Non-structural Agencies</u>		
1	<i>Komisi Kepolisian Nasional—National Police Commission</i>	<i>Act 2/2002 on the National Police of the Republic of Indonesia</i>
2	<i>Komisi Pengawas Persaingan Usaha (KPPU)—The Commission for the Supervision of Business Competition</i>	<i>Act 5/1999 on the Prohibition of Monopoly Practices and Unhealthy Business Competitions</i>
3	<i>Komisi Perlindungan Anak Indonesia—The Indonesian Child Protection Commission</i>	<i>Act 23/2002 on Child’s Protection, and its Amendments (Act 35/2014)</i>
4	<i>Komisi Kejaksaan—Attorney Commission</i>	<i>Act 16/2014 on the General Attorney</i>
5	<i>Komisi Nasional Lanjut Usia – National Commission for Elderly People</i>	<i>Act 13/1998 on the Wellbeing of Elderly People</i>

No.	Name of Institution	Relevant Statutes
6	<i>Komisi Penyiaran Indonesia</i> — Indonesian Broadcast Commission	<i>Act 32/2002 on Broadcasting</i>
7	<i>Komisi Banding Merek</i> — Trademark Appeal Commission	<i>Act 19/2002 on Trademark</i>
8	<i>Komisi Banding Paten</i> — Patent Appeal Commission	<i>Act 13/2016 on Patent</i>
9	<i>Komisi Informasi</i> —Public Information Commission	<i>Act 14/2008 on the Public Information Disclosure</i>
10	<i>Komisi Pengawas Haji Indonesia</i> —The Indonesian Commission for Oversight of the Hajj	<i>Act 13/2008 on Hajj</i>
11	<i>Komisi Nasional Hak Asasi Manusia (Komnas HAM)</i> — National Commission for Human Rights	<i>Act 39 on Human Rights and Act 40/2008 on the Eradication of Racial and Ethnic Discrimination</i>
12	<i>Komisi Pemilihan Umum</i> — General Election Commission	<i>Act 7/2017 on General Elections (and its Subsequent Laws)</i>
13	<i>Komisi Pemberantasan Tindak Pidana Korupsi</i> —Corruption Eradication Commission	<i>Act 30/2002 on the Corruption Eradication Commission</i>
14	<i>Komite Nasional Keselamatan Transportasi</i> —National Committee for Transport Safety	<i>Act 23/2007 on Railways, Act 17/2008 on Shipping, Act 1/2009 on Aviation, and Act 22/2009 on the Road Traffic and Transport</i>
15	<i>Komite Nasional Keamanan Penerbangan</i> —National Committee for Aviation Safety	<i>Act 1/2009 on Aviation</i>
16	<i>Lembaga Produktivitas Nasional</i> —National Productivity Agency	<i>Act 13/2003 on Workforce</i>
17	<i>Lembaga Sensor Film</i> — Censor Agency	<i>Act 33/2009 on Motion Picture</i>
18	<i>Lembaga Kerja Sama Tripartit</i> —Tripartite Cooperation Agency	<i>Act 13/2003 on Manpower</i>
19	<i>Lembaga Perlindungan Saksi dan Korban (LPSK)</i> — Criminal Witnesses and Victim Protection Agency	<i>Act 13/2006 on Criminal Witnesses and Victim Protection</i>

No.	Name of Institution	Relevant Statutes
20	<i>Dewan Riset Nasional</i> — National Research Council	<i>Act 18/2002 on the National System of Research, Development, and Application of Science and Technology</i>
21	<i>Dewan Pertimbangan Otonomi Daerah</i> — Subsidiarity Council	<i>Act 23/2014 on Regional Autonomy</i>
22	<i>Dewan Pengupahan Nasional</i> —National Wage Council	<i>Act 21/2000 on the Unions and the Act 13/2003 on Workforce)</i>
23	<i>Dewan Energi Nasional</i> — National Energy Council	<i>Act 30/2007 on Energy</i>
24	<i>Dewan Pers</i> —Press Council	<i>Act 40/1999 on Press</i>
25	<i>Dewan Pertimbangan Presiden</i> —President’s Advisory Council	<i>Act 19/2006 on the Presidential Advisory Council</i>
26	<i>Dewan Sumber Daya Air Nasional</i> —National Water Resources Council	<i>Act 7/2004 on Water Resources</i>
27	<i>Dewan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam</i> — Council for Batam Harbor and Free Trade Zone	<i>Act 36/2000 as Amended by Act 44/2007 on the Free Trade and Free Harbour Zones</i>
28	<i>Dewan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Bintan</i> — Council for Bintan Harbor and Free Trade Zone	<i>Act 36/2000 as Amended by Act 44/2007 on the Free Trade and Free Harbour Zones</i>
29	<i>Dewan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Karimun</i> — Council for Karimun Harbor and Free Trade Zone	<i>Act 36/2000 as Amended by Act 44/2007 on the Free Trade and Free Harbour Zones</i>
30	<i>Dewan Jaminan Sosial Nasional</i> —National Social Security Council	<i>Act 40/2004 on the National Social Security System</i>
31	<i>Dewan Nasional Kawasan Ekonomi Khusus</i> —National Council for Special Economic Zone	<i>Act 39/2009 on Special Economic Zones</i>
32	<i>Badan Pendukung Pengembangan Sistem</i>	<i>Act 11/1974 on Waters</i>

No.	Name of Institution	Relevant Statutes
	<i>Penyediaan Air Minum—</i> Agency to Support the Development and Supply of Drinking Water	
33	<i>Badan Pengatur Hilir Minyak</i> <i>dan Gas—Oil and Gas</i> Downstream Regulatory Agency	<i>Act 22/2011 on Oil and Gas</i>
34	<i>Badan Nasional Sertifikasi</i> <i>Profesi—National Profession</i> Certification Agency	<i>Act 13/2003 on Workforce</i>
35	<i>Badan Perlindungan</i> <i>Konsumen Nasional—</i> National Consumers Protection Agency	<i>Act 8/1999 on Consumers' Protection</i>
36	<i>Badan Nasional Pengelola</i> <i>Perbatasan—National Outer</i> Territory Management Agency	<i>Act 43/2008 on the National Territory</i>
37	<i>Badan Pengelola (Perbatasan)</i> <i>di Tingkat Daerah—Regional</i> Outer Territory Management Agency	<i>Act 43/2008 on the National Territory</i>
38	<i>Badan Pengusahaan Kawasan</i> <i>Perdagangan Bebas dan</i> <i>Pelabuhan Sabang—Agency</i> for the Management of Sabang Harbor and Free Trade Zone	<i>Act 36/2000 as Amended by Act</i> <i>44/2007 on the Free Trade and Free</i> <i>Harbour Zones</i>
39	<i>Badan Pengusahaan Kawasan</i> <i>Perdagangan Bebas dan</i> <i>Pelabuhan Bebas Batam—</i> Agency for Batam's Free Trade Zone and Harbor	<i>Act 36/2000 as Amended by Act</i> <i>44/2007 on the Free Trade and Free</i> <i>Harbour Zones</i>
40	<i>Badan Pengusahaan Kawasan</i> <i>Perdagangan Bebas dan</i> <i>Pelabuhan Bebas Karimun—</i> Agency for Karimun's Free Trade Zone and Harbor	<i>Act 36/2000 as Amended by the Act</i> <i>44/2007 on the Free Trade and Free</i> <i>Harbour Zones</i>
41	<i>Badan Pengusahaan Kawasan</i> <i>Perdagangan Bebas dan</i> <i>Pelabuhan Bebas Bintan—</i> Agency for Bintan's Free Trade Zone and Harbor	<i>Act 36/2000 as Amended by the Act</i> <i>44/2007 on the Free Trade and Free</i> <i>Harbour Zones</i>

No.	Name of Institution	Relevant Statutes
42	<i>Ombudsman Republik Indonesia</i> —Ombudsman of the Republic of Indonesia	<i>Act 37/2008 on the Ombudsman of the Republic of Indonesia</i>
43	<i>Konsil Kedokteran Indonesia</i> —Indonesian Medical Council	<i>Act 29/2004 on Medicare</i>
44	<i>Akademi Ilmu Pengetahuan Indonesia</i> —Indonesian Academy of Science	<i>Act 8/1990 on the Indonesian Academy of Science</i>
45	<i>Badan Pertimbangan Telekomunikasi</i> —Telecommunication Advisory Board	<i>Act 3/1989 and Act 36/1999 on Telecommunication</i>
46	<i>Badan Regulasi Telekomunikasi Indonesia</i> —Indonesian Telecommunication Regulatory Agency	<i>Act 36/1999 on Telecommunication</i>
47	<i>Pusat Pelaporan dan Analisis Transaksi Keuangan</i> —the Indonesian Financial Transactions Reports and Analysis Centre	<i>Act 15/2002 on Money Laundering and Act 9/2013 on the Prevention and Eradication of Terrorism</i>
48	<i>Komisi Aparatur Sipil Negara</i> —Civil Service Commission	<i>Act 5/2014 on Civil Service</i>
49	<i>Komite Perdagangan Nasional</i> —National Trade Commission	<i>Act 7/2014 on Trade</i>
50	<i>Komite Industri Nasional</i> —National Industry Commission	<i>Act 3/2014 on Industries</i>
51	<i>Badan Koordinasi Nasional Penyuluhan Pertanian, Perikanan dan Kehutanan</i> —National Coordinating Agency for Agriculture, Fisheries, and Forestry Counselling	<i>Act 16/2006 on the Counselling System for Agriculture, Fisheries, and Forestry</i>
52	<i>Komisi Penyuluhan Nasional</i> —National Agricultural Counselling Commission	<i>Act 16/2006 on the Counselling System for Agriculture, Fisheries, and Forestry</i>

No.	Name of Institution	Relevant Statutes
53	<i>Badan Koordinasi Penyuluhan—Agricultural Counselling Coordinating Agency</i>	<i>Act 16/2006 on the Counselling System for Agriculture, Fisheries, and Forestry</i>
54	<i>Badan Pelaksana Penyuluhan—Agricultural Extension Agency</i>	<i>Act 16/2006 on the Counselling System for Agriculture, Fisheries, and Forestry</i>
55	<i>Badan Amil Zakat Nasional—National Zakat (Alms) Agency</i>	<i>Act 23/2011 on Zakat (Alms) Management</i>
56	<i>Badan Pertimbangan Aparatur Sipil Negara—Advisory Agency on Civil Service</i>	<i>Act 5/2014 on Civil Service</i>
57	<i>Lembaga Pencegahan dan Pemberantasan Kerusakan Hutan—Agency for Preventing and Eradication of Deforestation</i>	<i>Act 18/2013 on the Prevention and Eradication of Deforestation</i>
58	<i>Badan Pengawas Pasar Tenaga Listrik—Electricity Market Oversight Agency</i>	<i>Act 20/2003 on Electricity</i>
59	<i>Badan Koordinasi Pemberantasan Rupiah Palsu—Agency of Counterfeit Coordination</i>	<i>Act 7/2012 on the National Currency</i>
60	<i>Komite Profesi Akuntan Publik—Committee on Public Accountant Professions</i>	<i>Act 5/2011 on Public Accountant</i>
61	<i>Dewan Gelar, Tanda Jasa, dan Tanda Kehormatan—Council for Title, Decorations, and Honours</i>	<i>Act 20/2009 on Title, Decorations, and Honours</i>
62	<i>Majelis Pertimbangan Tenaga Nuklir—Nuclear Energy Advisory Council</i>	<i>Act 10/1997 on Nuclear Energy</i>
63	<i>Komite Kebijakan Industri Pertahanan—Defence Industry Policy Committee</i>	<i>Act 16/2012 on Defence Industries</i>
64	<i>Badan Promosi Pariwisata Indonesia—The Indonesian Tourism Promotion Agency</i>	<i>Act 10/2009 on Tourism</i>

No.	Name of Institution	Relevant Statutes
65	<i>Badan Pengawas Rumah Sakit Indonesia—Hospitals Oversees Agency</i>	<i>Act 44/2009 on Hospitals</i>
66	<i>Lembaga Sertifikasi Industri Hijau (LSIH)—Green Industry Certification Agency</i>	<i>Act 3/2014 on Industries</i>
67	<i>Komite Pengelola Lembaga Sertifikasi Industri Hijau—Committee for the Management of the Green Industry Certification Agency</i>	<i>Act 3/2014 on Industries</i>
68	<i>Badan Perfilman Indonesia—Indonesian Movies Agency</i>	<i>Act 33/2009 on Motion Pictures</i>
69	<i>Komite Akreditasi Nasional—National Accreditation Committee</i>	<i>Act 20/2014 on Standardisation and Compliance Assessment</i>
70	<i>Konsil Tenaga Kesehatan—Council for Health Workers</i>	<i>Act 36/2014 on Health Workers</i>
71	<i>Konsil Tenaga Keperawatan—Council for Nursery Workers</i>	<i>Act 38/2014 on Nursery</i>
72	<i>Dewan Insinyur Indonesia—Indonesian Engineers Council</i>	<i>Act 11/2011 on Engineers</i>
73	<i>Dewan Pertahanan Nasional—National Defence Council</i>	<i>Act 3/2002 on the National Defence</i>
74	<i>Majelis Disiplin Tenaga Kesehatan—Health Workers Disciplinary Council</i>	<i>Act 36/2014 on Health Workers</i>
75	<i>Badan Pertimbangan Kesehatan Nasional—National Health Advisory Agency</i>	<i>Act 36/2009 on Health</i>
76	<i>Komisi Penilai Amdal—Environmental Assessment Commission</i>	<i>Act 32/2009 on Environment</i>

The list above demonstrates that numerous sectoral legislations provide for the establishment of ministries and agencies. Laws and regulations are the major impediments to reorganisation; they tend to curtail the flexibility of managing the

government.⁷⁰⁶ Societies are rapidly changing and becoming more complex. Technological advances and more knowledgeable citizens create new challenges for the government—it is required to keep up. The current legislation framework has prevented the creation of the flexible organisation needed to keep pace with changes and new challenges.

Abnur also confirmed that the most significant constraint to reform is the law, because Indonesia often tries to solve each new problem by passing a new law and, along with it, forming a new public institution.⁷⁰⁷ Legal rules substantially influence the creation of a swollen bureaucracy, resulting in an oversized and fragmented administration with overlaps of purposes and powers.⁷⁰⁸ According to Peters, the use of legislation for the creation of new institutions is common in many governments, as legislation is frequently involved in administrative structural formation.⁷⁰⁹ Many ministries and agencies are mentioned in their sectoral legislation; their nomenclatures and purposes have been stated in statutes. In this way, they preserve their existence. Often the names of the ministries are quite similar to the list of administrative functions provided by *the State Ministries Act*.⁷¹⁰ The President, as the head of administration, does not have the flexibility to determine and establish ministries according to his needs. It will also be difficult for the President to make decisions to abolish, merge or reconfigure his ministries.

It is essential to examine the legislation that forms the legal basis to conduct the activities of the relevant institutions in conducting reorganisation. The administrative decision to dissolve an agency that is protected by legislation may become a measure that contravenes the law, if the law related to the organisation is not amended beforehand. As such, the terms to dismantle such agencies should be provided in the amended version of that particular law. The next section discusses the current legal framework to reform.

⁷⁰⁶ Interview with Asman Abnur (n 352).

⁷⁰⁷ Ibid.

⁷⁰⁸ Interview with Rini Widyantini (n 347).

⁷⁰⁹ Lucien Peters (n 37).

⁷¹⁰ See *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

6.4 Current Legal Framework to Reform

Legislation in Indonesia is mostly passed to address a particular issue. There is very little consideration of governance and bureaucracy reform in the process of law-making. Laws in Indonesia mostly originate from bills initiated by the DPR. To be promulgated as the law, a bill should be deliberated and discussed with the President to obtain a joint agreement. In reality, the President himself never discusses a bill with the DPR; he is represented by the ministers or their top-echelon bureaucrats to reach a joint agreement on the bill with the DPR.

In the event that the DPR and the government (ministers and bureaucrats) reach a joint agreement on a bill, but the president refuses to sign it, the Constitution provides concerning instructions for resolving the disagreement. In 2018, the Indonesian media was replete with the news of President Joko Widodo's refusal to sign the draft of the MD3 bill initiated by the DPR, despite a joint agreement between the DPR and the ministers representing the President. The President refused to sign the MD3 bill for fear that the law would decrease the quality of democracy in Indonesia.⁷¹¹ However, it still became the law, despite the President's refusal to sign.⁷¹² The same situation happened again in 2019 when the President refused to sign the bill on the Corruption Eradication Commission, despite a joint agreement between parliament and the government. Eventually, these two bills still became laws. This is because Article 20 paragraph (5) of the 1945 Constitution says that if the President fails to sign a jointly approved bill within 30 days of its approval, that bill shall legally become law and must be promulgated.⁷¹³

Because of their ability to have a bill legalised, with or without the president's legalisation, the DPR holds more significant power in law-making. The DPR can insist on the establishment of a new statute and the president's refusal to sign it means nothing—it will become the law regardless. If the bill also contains a provision to

⁷¹¹ Michael Walsh and Nurina Savitri, 'Indonesian Parliament Passes Controversial Law Targeting Its Critics, Anti-Corruption Commission', *ABC News* (Online, 28 February 2018) <<http://www.abc.net.au/news/2018-02-28/indonesian-politicians-pass-law-targeting-their-critics/9489336>>; Marguerite Sapiie, 'Jokowi Refuses to Sign MD3 Law', *The Jakarta Post* (Online, 15 March 2018) <<http://www.thejakartapost.com/news/2018/03/14/jokowi-refuses-to-sign-md3-law.html>>.

⁷¹² Sukmana (n 658).

⁷¹³ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

establish a new agency, the government would have to create a new agency, as the law stipulates. In terms of preventing the mushrooming of new agencies by legislation, the government is in a weaker position than the DPR.

Legislation is the political product of many compromised, vested political interests. Those interests belong to various groups—mainly political parties with members of parliament in the DPR and government, or bureaucrats. Their interests are then embedded in the legislation. The minister and one of his deputies said:

I saw two dominant aspects [influence the reform]. First is the political interest, this can be the interest of political parties that represented by their members of parliament, along with their vested interest. Because of this, the product of our parliament is based on the ‘order’ of the parties. There are ten political parties in Indonesia; each of them has their agenda for this country. Their interests dominate our parliament. This can be seen in every hearing to discuss a bill; their vested interests are reflected in the bill being discussed.⁷¹⁴

However, some people in our administration are greedy. To strengthen the existence of their institution, they do not want other institutions to share the role. Instead, they tried to make their institution to be mentioned in the statutes. Since the law is the second strongest legislation after the constitution, it will make them stronger.⁷¹⁵

We always have that vested interest, first, to strengthen the position of an institution, it mostly happened to non-ministerial agencies. Since they wanted their existence to be acknowledged, they raced to have a provision of themselves in the legislations.⁷¹⁶

March and Olsen say that bureaucracy often turns into a political arena of conflicting interests.⁷¹⁷ To address these interests, the government should have a stronger bargaining position, relevant to other political sources. The vested interests in government organisation are a logical consequence of democracy and an inevitable

⁷¹⁴ Interview with Asman Abnur (n 352).

⁷¹⁵ Interview with Rini Widyantini (n 347).

⁷¹⁶ Interview with Teguh Widjinarko (n 348).

⁷¹⁷ March and Olsen (n 35).

issue.⁷¹⁸ Therefore, the government should opt to incorporate its objectives with the surrounding interests.

Constitutionally, the executive would not be able to change the legislation without the approval of the parliament. Hence, if possible, reorganisation should be conducted beyond the limits of legislation.⁷¹⁹ Ideally, a structure within the government should be built according to the nation's strategic needs. However, ministries and agencies often use and manipulate legislations to enlarge their organisations and power, to preserve their existence, increase their budget and increase the number of available positions.⁷²⁰

Supriyono argued that legislation should not address the managerial aspect of administration, to maintain the flexibility of bureaucratic management. However, since the foundation of administrative need is political demand, the decision to create a structure often involves 'politically-heavy considerations.'⁷²¹ As such, it can be difficult for a country such as Indonesia to create legislation that does not address the managerial aspect.

Many ministries and agencies have tried to insert themselves in their sectoral laws despite the fact that agencies do not necessarily have to be established by a statute. Regulations such as PP (or *Perpres*) are sufficient to provide a legal base for the establishment of an agency. However, PPs have limitations, and, in the interest of securing a stronger position in the administration and guaranteed existence, many agencies request to be mentioned in the statutes. Arianti stated:

Agencies tend to request to be stated in the legislation to have a stronger position. There is an interest in doing this since the creation of a new agency only with a presidential regulation is already sufficient. But still, they want to use the law, even just for a small agency. There are ministries established only with presidential regulations, but agencies sometimes request to be established by statute. The main reason is that it is harder to change the law than regulations.⁷²²

⁷¹⁸ Interview with Asman Abnur (n 352).

⁷¹⁹ Ibid.

⁷²⁰ Interview with Rini Widyantini (n 347).

⁷²¹ Interview with Bambang Supriyono (n 389).

⁷²² Interview with Diah Arianti (n 382).

Laws do not provide the necessary support for reorganisation—many are passed based on their sectoral problems, resulting in sectoral egos and curbing the government. The minister and his deputy said:

Today, I met with the head of *Basarnas* [National Search and Rescue Agency]; I tested him and asked what the job of his agency is. He replied that the job of his agency is to conduct search and rescue. I was then asked whether *Basarnas* had a program for the prevention of any incident. He said that the laws and regulations related to *Basarnas* do not mandate them to do that. It shows that when we perform our duties, it always overshadowed by legal rules. Thing like this is curbing our bureaucracy.⁷²³

I think our laws and regulations did not support [the reform]; each of them is still talking in the eye of their sector. The sectoral ego in our public organisations is still high. We cannot rely on existing laws for doing the reform.⁷²⁴

To reduce bloating, the government should have the capacity to maintain efficiency by safeguarding the process of law-making. It does not necessarily mean the executive should reject any consideration to create a new agency. A new agency can be established with sufficient justification of its necessity. However, the prerogative rights of the president in managing the administration, according to the 1945 Constitution, should be the main consideration in the creation of a new agency and when formulating the law. The use of statutes to create a new agency should be avoided and any decision of whether to create or not to create a new agency should be given to the president. Similarly, a special advisor for the Minister of Administrative and Bureaucratic Reform stated:

Theoretically, any organisation [of government] should be dynamic, it should be able to adapt to its surrounding changes. This is why it is unwise to mention it in a statute, because when there are changes that require us to change or dismantle such organisations, it will require us to amend the law first. I think we should stop this, give this power to the president, let the president decide whether we need a new agency or not.⁷²⁵

⁷²³ Interview with Asman Abnur (n 352).

⁷²⁴ Interview with Rini Widyantini (n 347).

⁷²⁵ Interview with Teguh Widjinarko (n 348).

Constitutionally, the president holds the power to decide whether a certain issue needs to be addressed by an existing institution or by creating a new ministry or agency for that specific issue. Sectoral statutes should not reduce the constitutional power of the President. Yet, many of these are passed based on their sectoral-perspective. As such, laws become fragmented, resulting in disharmony of laws and policies issued by different sectors. The next section discusses further disharmony of laws and policies that constrain reorganisation.

6.5 Disharmony of Laws and Policies

Disharmony of laws in Indonesia has resulted in disharmony of functions, producing sectoral egos and causing duplication and inefficiency. Widjinarko stated:

The major challenge of reform is the culture of sectoral ego. Since the beginning of the reformation era [1998—the year Soeharto resigned from power], each ministry and agency has tried to pass their own legislation, which mentions the nomenclature of its own institution. This has happened because the leadership of these institutions is afraid their institutions will no longer exist because of reform. They formulate the laws to give protection to their agency. Since then, we have so many ministries and agencies that are mentioned in statutes. This will make it hard for us to make rapid changes to our organisations.⁷²⁶

Because of their large size, duplications and overlaps occur with some executive bodies addressing the same issues. It has become a potential source of red tape and the disharmony of laws has prolonged the problem, resulting in poor processes.

The focus of administrative reform is implementing policy, laws and regulations, but the bureaucrats responsible for implementing these policies and legislations face difficulties because of incoherency between them.⁷²⁷ After Suharto resigned from the presidency in the 1998 Velvet Revolution, ministries and agencies raced to pass their sectoral legislation and tried to include themselves in the statutes. The culture of the sectoral ego is arguably the root of this phenomenon. Many agencies' leaders are afraid of the dismissal of their institutions and seek protection by formulating legislation. It

⁷²⁶ Ibid.

⁷²⁷ Kasim (n 15) 19.

became a challenge for the government to conduct timely adjustments, to conform to rapid changes in society, because institutions are statutorily established.

Laws play an essential role in shaping the bureaucracy. Ideally, the law should not restrict reorganisation being conducted to respond to changes in society. However, sometimes further statutes are required to provide the justification and legal basis to exercise power. To prevent legislation for constraining reform, the law should not explicitly mention specific institutions in connection with current issues. For flexibility, statutes should only mention that the government is responsible for specific issues, without rigidly specifying the nomenclature of a particular ministry or agency for that particular task. The statute should not elect to establish a new agency for that particular task; instead, the decision should be given to the government, using its regulation instrument.

To establish efficiency and improve effectivity, the government needs to be slim. Murniasih stated that a streamlined bureaucracy is a prerequisite for effective and efficient government.⁷²⁸ However, streamlining the machinery of government is not easy, because there is no real commitment from the parliament to support reform. Murniasih stated:

I can see the DPR does not concern [itself] with the issue of institutional reform. In fact, they threaten to amend the Civil Service Law and use it as a bargaining power if the Civil Service Commissions are dissolved. Instead of helping to achieve successful reform, they broke their commitment to reform.⁷²⁹

Muqowam argued that the mushrooming of bureaucracy by legislation is a normal result of political processes.⁷³⁰ Clearly, reform needs support from both sides of power. It is difficult to conduct reform with support from only one side of power—from either the executive or the legislative. Both the executive and legislative have their own critical roles in shaping the bureaucracy. Yet, the commitment from within the government and its bureaucracy itself is of the utmost importance, as they perfectly understand the internal problems that need to be fixed. Brown argued that if the executive was seriously committed to improving its bureaucracy, it could make

⁷²⁸ Interview with Erni Murniasih (n 349).

⁷²⁹ Ibid.

⁷³⁰ Interview with Ahmad Muqowam (n 350).

considerable progress despite any obstructions it may face along the way.⁷³¹ The bureaucracy's strong commitment is a determining factor for dealing with any pragmatic interest in the development of the administrative structure.

The vast majority of institutions insist that they need to establish an independent organisation and preserve their existence through legislation, rather than considering administration an interconnected system. There is no instrument to filter the proposals to create new institutions by using laws or regulations, even from within the executive itself. If the Indonesian government wants to solve its organisational problems, it should first address the laws and regulations as the key to reform.⁷³² If legislations are in disharmony, so are the business processes and policies produced by so many different institutions.

Prasodjo argued that all regulations linked to government organisations need to be reviewed in a 'comprehensive restructuring package'.⁷³³ Given the massive laws and regulations in Indonesia, it may take many years to review them all.⁷³⁴ Any administrative organisation should be flexible with changes and such flexibility potentially benefits budget-saving and reducing expenditure. Hence, organisations need to be established or dismissed whenever required, without any obstruction, including obstruction from legislation.⁷³⁵

Having too many agencies addressing the same issue means that there are excessive channels to implement policy and public service delivery. It may lead to problematic efforts to achieve policy goals.⁷³⁶ Many organisations are created based on desire, rather than real necessity, which has caused unnecessary enlargement of the organisation of many ministries and agencies.⁷³⁷ Legal rules have contributed to the creation of outsized and fragmented administration. The spirit of efficiency is not evident in the current legal framework.⁷³⁸ The sectoral ego and disharmony of laws

⁷³¹ Brown (n 490).

⁷³² Interview with Eko Prasodjo (n 351).

⁷³³ Ibid.

⁷³⁴ Ibid.

⁷³⁵ Interview with Yanuar Ahmad (n 365).

⁷³⁶ Ibid.

⁷³⁷ Ibid.

⁷³⁸ Yogi Suprayogi (n 462).

have made for fragmented organisations. Unless there are systematic efforts to reform and harmonise legislation, the government will continue to bloat without control.

Effective reform requires a harmony of laws, regulations and policies. Yet, pragmatic interest among bureaucrats to preserve their own agencies has fostered competition to produce legislation to protect them. Consequently, legislations have become fragmented and overlapping. As a result, organisations have become too rigid and difficult to include in the change strategies of the country.⁷³⁹ Ahmad argued that either the executive or the legislative refuses to be labelled as constraining the reform.⁷⁴⁰ As argued many times throughout this thesis, both branches of power have a significant influence in determining the shape of government organisations through legislation and regulation. As such, their mutual commitment to reform is important.

6.6 Chapter Summary

Findings from the interviews show that the political will and commitment to reform should start at the apex of administration. Although the President has shown his support for bureaucratic reform, the political will of his administration to reform has often been lacking. Bureaucracy reform requires stronger commitment from public leaders, both from the executive and legislative branches of powers.

In parliament, bureaucratic reform only gained support from one of its 11 commissions.⁷⁴¹ This showed that the DPR does not unequivocally support reform, despite the wastefulness associated with maintaining the budget to manage the large government, providing facilities for top administrators and the use of programs that are irrelevant to the needs of the country. Reform is also constrained by rent-seeking, political bargaining and other vested interests. Still, reform commitment should first come from the executive, as they hold control over the bureaucracy. In this regard, Muqowam argued that as long as the bureaucrats are transparent and possess high integrity, political parties will not politicise the bureaucracy.⁷⁴²

⁷³⁹ Interview with Yanuar Ahmad (n 365).

⁷⁴⁰ Ibid.

⁷⁴¹ Interview with Rini Widyantini (n 347).

⁷⁴² Interview with Ahmad Muqowam (n 350).

Reorganisation can drive reform in other areas of governance. However, laws and regulations have constrained reorganisation. Many executive bodies are statutorily established, posing difficulties to restructuring of these agencies. This prevents the flexibility needed for organisational changes. Because of this, the government was unable to conduct a timely organisational adjustment to cope and adapt to new circumstances. As such, law and regulation frameworks have curbed the bureaucracy and did not support the reorganisation. Moreover, statutes are in disharmony because of sectoral egos, resulting in duplications and fragmented policies. To explore the best potential solutions to overcome the problems above, the next chapter discusses possible solutions to address the political and legal problems of reorganisation.

Chapter 7: Possible Solution to Address the Political and Legal Problems of Reorganisation in Indonesia

7.1 Introduction

Findings from the interviews discussed in previous chapters show that the problems surrounding reorganisation are generated by the political environment and the country's legislative framework. The political framework influences the culture of legislation-making, as well as how the law addresses reorganisation. It can be difficult to overcome the political and legal problems of reorganisation without changing the culture of law-making, specifically in regards to statutes linked to the organisations of the government.

The 350-year Dutch administration in Indonesia influenced Indonesian legal culture. Indonesia follows the civil law legal system inherited from the Dutch, intermixed with customary law and Roman-Dutch law.⁷⁴³ Reorganisation and the political system are interrelated. How the bureaucracy works is affected by the political environment. Ideally, politics should not manipulate reorganisation. Yet, reorganisation implies more than a plain administrative measure—various political interests and statutory impediments (discussed in previous chapters) influence and constrain reorganisation.

The interviews also found that the Indonesian government has too many organisations. Ministries and agencies tend to enlarge their units or organisations to expand their power and increase their budgets.⁷⁴⁴ The Indonesian bureaucracy bloated significantly after the downfall of Suharto in 1998. Since then, government bodies have raced to pass laws in their respective areas to protect their existence. They are afraid of the dismissal of their institutions and seek protection from legislation. Many of these laws are passed based on the perspective of their sector and are not in harmony with laws in other sectors. As such, disharmony of laws and overlap of functions occur.⁷⁴⁵

⁷⁴³ See Chapter 2.

⁷⁴⁴ See Section 5.2.

⁷⁴⁵ See Sections 5.4 and 6.5.

This chapter explores possible solutions to address the political and legal problems facing reorganisation. It serves to commence debate on the best possible solution for the problems presented in the previous chapters. In the future, this thesis will be useful for developing a white paper addressing the political and statutory problems surrounding reorganisation. Following this introduction, Section 2 discusses the initial identification of a possible solution and Section 3 discusses why reorganisation needs a robust new law. Section 4 discusses the key points for the bill proposed by this thesis. A chapter summary concludes this chapter.

7.2 Initial Identification of Solution

Institutional reform has been an attractive commodity of political rhetoric. Unfortunately, commitment from the government to design an efficient administration is not evident.⁷⁴⁶ Systematic and comprehensive solutions are needed to prevent institutions from being statutorily established, which will provide flexibility for future reorganisations. Improving public services through bureaucratic reform is one of the main programs intended to achieve Indonesian development goals.⁷⁴⁷ Although the bureaucratic structure is an important tool to achieve national goals, the legal culture in Indonesia does not facilitate the measures for establishing efficiency and improving the effectivity of the bureaucracy.

The DPR initiates most legislation and when this legislation contains provisions to establish a new agency, the government must do so. Prasodjo stated that ‘instead of getting leaner, the organisational structure of our central government is getting bigger, and it is too big.’⁷⁴⁸ The Indonesian bureaucracy has grown so massive because legislations create structures. Reversing this legal culture is challenging, as organisations were made and expanded because of pragmatic interests:

There was increasing demand from members of our parliament, and from new sectors of development, to create new agencies, councils, commissions or other forms of institutions using legislation. On the other hand, the government [is] also establishing new agencies using the presidential regulations, government

⁷⁴⁶ Interview with Eko Prasodjo (n 351).

⁷⁴⁷ *Undang-Undang 17/2007 Tentang Rencana Pembangunan Jangka Panjang Nasional* [Act 17/2007 on the National Long-term Development Plan].

⁷⁴⁸ Interview with Eko Prasodjo (n 351).

regulations and cabinet meetings. The organisation has become swollen because of so many pragmatic interests. We often try to solve our problems by creating a new organisation.⁷⁴⁹

Reform requires a legal culture that promotes the integrity of the lawmakers. Politicians should avoid using legislation for their gain or for promoting the vested interests of their groups. This is why Indonesia needs a robust legal instrument in the form of a new law able to support reform, reverse the legal culture and establish a clearer and more comprehensive requirement for the creation of new organisations. This new law should serve to compensate for the current, insufficient legal guidance and unsystematic reform.

Insufficient legal guidance means that the best government can do was only to review the dysfunctional LNS.⁷⁵⁰ However, this review has been conducted without clear vision, steps or guidance. Review of agencies was only partial and was not conducted periodically. Because of this, Prasodjo argued that reform has no value and no clear goal, as it is just 'business as usual'.⁷⁵¹

To be robust, the aforementioned new law should be designed in a way that enables it to reduce the interference of politics in the bureaucracy and strengthen administrative discretion in managing organisations. It should need to define the classification of executive bodies. This can be done by plainly describing what constitutes an ad hoc or permanent institution, a structural or non-structural institution and a ministry or agency.⁷⁵² The next section further explores the debate and urgency of this new legal instrument.

7.3 Why Reorganisation Needs a Robust New Law and What is its Obstacle?

It is necessary to commence the debate on how reform should stop the bloating of the government. Arguably, the willingness to change should start from the bureaucracy itself, as they perfectly understand the internal problems that need to be fixed and have

⁷⁴⁹ Ibid.

⁷⁵⁰ Ibid.

⁷⁵¹ Ibid.

⁷⁵² Interview with Rini Widyantini (n 347).

a thorough comprehension of the structures.⁷⁵³ However, as examined in previous chapters, politics is an essential determinant in shaping the bureaucracy. Reorganisation is constrained by various interests within the political battleground and hindered by legislation that restricts reorganisation measures. This is why this thesis argues that reform could be commenced by introducing the new legislation proposed here. Widyantini and Arianti expressed the urgent necessity of this new law to stop the bloating:

There was a time when the President wanted to dissolve some ministries and agencies. It took years because we do not have a grand design for our administrative structure. There was no guidance on how we should streamline the administration.⁷⁵⁴

We need a new law in the institutional matter to solve the structural problems of the administration. So far, our guidance was only the circulation of a letter from the Cabinet Secretary, which says that the representative of government should not propose the establishment of a new agency when discussing a bill with the DPR and if possible, to prevent the DPR from inserting clauses for the establishment of a new agency in legislation. Both the executive and legislative should have the same commitment and aware that we are currently reforming our bureaucracy. We are currently struggling to make our public sector more efficient and effective. Certainly, we do not want to spend a lot of our budget on expenditures to maintain our vast and massive bureaucracy.⁷⁵⁵

Similarly, Prasodjo suggested that the Indonesian administration develop the basic norms for institutional reform in a statute, for a stronger implementation power.⁷⁵⁶ However, passing this bill may face some obstacles. The parliament might oppose this bill if they thought it would restrict their ability to formulate legislation that includes the terms for establishing a new body.⁷⁵⁷ Assuming that the government should take charge in introducing this legislation, the government needs to be able to convince the DPR that the main idea of this proposed bill is not to restrict the DPR's role in legislation-making. Instead, this new law aims to create more effective, efficient and accountable government structures that are able to deliver better public service and

⁷⁵³ See Chapter 6.

⁷⁵⁴ Interview with Rini Widyantini (n 347).

⁷⁵⁵ Interview with Diah Arianti (n 382).

⁷⁵⁶ Interview with Eko Prasodjo (n 351).

⁷⁵⁷ Interview with Diah Arianti (n 382).

achieve the national goals. It would do this by redefining the classification of government bodies and establishing terms and requirements for the creation of new agencies.

Yet, changing a legal culture—or any culture—can be challenging. It requires behaviour modification of society. Changing a legal culture often meets with rejection and hostility.⁷⁵⁸ Pushing law reform to change the legal culture of reorganisation as proposed in this chapter may be met with rejection and hostility from those who are opposed to reform. Even a member of parliament implied that it would face this kind of rejection:

The DPR is the legislative branch of power. We are independent of the executive and only subject to the Constitution. We cannot be controlled by the executive or any legislation that will restrict our function according to the Constitution. I even doubt a bill of this kind of law can even pass the process of the preliminary hearing.⁷⁵⁹

Reform is a battle and it requires strategies and tactics to win. Passing this law to the DPR may involve a huge challenge, as it may seem controlling to the DPR. Over the years, the DPR has always attempted to accommodate their vested interests in the machinery of government.

Why does reorganisation need a robust new law? How will it be different and not create the same problem as any other legislation? To answer these questions, we need to look back on all the problems presented in this study. The root is the legislation, which is essentially a political product. How it is made and what legislation says is affected by the political setting. If the legislation is the root of the problem, then it is the legislation that needs to be addressed. As Nelken observes, the law can be a means for resolving current problems by transforming society.⁷⁶⁰ As such, the law is an important tool to solve problems and change social attitudes towards how reorganisation is conducted. If the Indonesian government wants to solve its organisational problems, it should first address the laws linked to bureaucratic reform.

⁷⁵⁸ David Nelken, 'Thinking About Legal Culture' (2014) 1(2) *Asian Journal of Law and Society* 255.

⁷⁵⁹ Interview with Abdul Kharis (n 401).

⁷⁶⁰ David Nelken, 'Using the Concept of Legal Culture' (2004)(29) *Australian Journal of Legal Philosophy* 1.

However, addressing each legislation that has provisions of establishing agencies can be difficult and take time—there are hundreds of these and amending each of these requires a lengthy political process. Therefore, safeguarding future legislation against being used to bloat the government is possibly the best and most realistic solution. This can be done by introducing the new legislation suggested by this thesis. For this suggested new law not to suffer the same problem as to the previous laws, its terms need to be designed so as not to create a new structure. The government, through the MoABR (which is responsible for managing reform and conducting reorganisation), should take the initiative to develop the bill of this law. If this bill is passed into law, its implementation can also be administered by the MoABR, as its scope falls under the governance area of this ministry.

The proposed bill should not opt for an expanded role of the MoABR. This thesis suggests the government should initiate the formulation of this bill. It is common in Indonesia that a ministry in that relevant area is responsible in formulating a bill on behalf of the President. Subject to his approval, the President will then submit the bill to the DPR (House of Representative). Since the topic of the proposed bill is within the area of work of the MoABR, it should take action to initiate the discussion of this bill. Drafting of the bill by the MoABR is not to expand its power and size, but, to only initiate the reform required.

Introducing a new law that minimises the interference of politics in the bureaucracy can help to change the legal culture of reform. Allowing more authority for the government to manage its structure will provide more structural flexibility, as restructuring may not need a law amendment. This new law ensures that agencies are created to improve the efficiency and effectivity of the government in delivering services to the public. It will serve as a legal basis that regulates the formation of agencies, as well as providing classifications of government bodies and guiding legislatures in deciding whether a new institution should be created for a specific problem and its proper institution's type.

As resources are limited, the government needs to minimise and prevent any duplication. Any terms in legislation related to administration structure should be able to justify the responsibility of the government for the issues involved. For example, it

should answer the question of why the function needs to be conducted by the government instead of the private sector.

In the past, the *naskah akademik* (see Chapter 2) that accompanied bills initiated by the DPR rarely provided a comprehensive analysis of the effect of forming a new agency on the state's budget. However, Katharina argued that the government is also reluctant to question or conduct budget impact analysis when discussing bills with the DPR.⁷⁶¹ Nevertheless, the current administration is overwhelmed with the strong power and influence of the DPR.⁷⁶² As ministers mostly came from the politics instead of technocrats, negotiations between the government led by ministers and the DPR are frequently surrounded by a political atmosphere.⁷⁶³ Accordingly, responses between them, in most cases, are not straightforward. This situation is worsened by the bureaucracy culture of fearing dismissal by external political influence and consequently having to accommodate for the vested interests of politicians.

Hence, the establishment of a new legal framework that provides comprehensive requirements and conditions on how to build institutions for the Indonesian administration is essential. Specifically, it will help the government and the DPR to examine whether an existing ministry or agency has addressed a particular issue and assess the effect of creating a new agency on the state's budget and governance framework. The bill for the suggested new law can be referred to as Bill on Institutional System of the Central Government Law (*RUU Kelembagaan Pemerintah Pusat*). With this new law, Indonesia will have a legal framework to decide—theoretically and philosophically—the paradigm for designing administrative organisations. The next section discusses key points for this suggested new law.

7.4 Bill on Institutional System of the Central Government Law (*Rancangan Undang-undang Kelembagaan Pemerintah Pusat*)

This section provides suggestions on the structure and major themes for the bill. The structure of the bill proposed here is heavily dependent on the Indonesian context and

⁷⁶¹ Interview with Riris Khatarina (n 458).

⁷⁶² Ibid.

⁷⁶³ See Section 6.3.1.

its custom of law-making. Specifically, this chapter suggests that the bill at least contain the terms for the following:

- a. General Terms–Definitions;
- b. Goals and Basic Principles;
- c. Administrative functions;
- d. Grand Design and Organisational Mapping;
- e. Classification of Central Government Organisations;
- f. Reasons for Organising;
- g. Procedures and Organising Process;
- h. The Executive’s Role;
- i. The Legislative’s Role;
- j. The Public’s Role;
- k. Transitional Provisions;
- l. Closing Provisions.

The next part of this section elaborates on the terms for each section of the bill according to the above structure.

7.4.1 General Terms–Definitions

According to Law 12/2011, there must be sufficient philosophical, sociological and legal reasons for why a law is needed. It is common in Indonesia that every legislation should contain general terms at the beginning of the body of law or the first few articles. In this regard, there are few aspects of clarity in the definition section of this bill:

a. Definition of *Urusan Pemerintahan* (Administrative Function)

There is no firm definition of ‘administrative function’ from the current legislation. Even the definition of ‘administrative function’ in *the State Ministries Act 39/2008* is very narrow and confusing. It says that ‘administrative function’ is ‘administrative function defined by the 1945

Constitution'.⁷⁶⁴ However, the Constitution itself is silent on the definition of 'administrative function'. Hence, it needs to be clarified here.

Administrative function refers to the responsibilities of the administration that need to be stipulated by the law or regulation. Legislation needs to describe the function of administration as a guarantee that the government will not neglect their responsibility to serve the public. In describing the term 'administrative function', it is important to have a definition that it will not create a monopoly of a particular function by a ministry or agency. Instead, it should be able to support collaboration between agencies in conducting such function. The below clauses could define the meaning of 'administrative function':

Administrative function, for this law, is a function for any ministry or agency of the central government for a particular area of governance, according to the Constitution of the Republic of Indonesia 1945 and/or prevailing laws and regulations which mandate the central government to function in that particular area.

b. Definition of Organisasi/Kelembagaan Pemerintah (Administrative Organisation/Institution)

Generally, an organisation is a social unity where the members interact and play distinct roles. A clear line of structures puts each member in a specialisation. The terms of organisation and institution that perform an administrative function should be clearly defined by this bill to show that they would be different from non-administrative institutions. It should describe the distinct characteristics of a government body.

In public management, 'organisation' can be described as a place where public management is held and a process wherein any organisation's components interact under the framework of a social and functional system. Therefore, a definition of 'organisation' should help avoid functional overlaps and support more integrated structures. Within the term of 'institution' is the relationship between norms, values, actions and beliefs, which centre on a number of social needs. It is difficult to separate the use of 'institutional' from the use of

⁷⁶⁴ Undang-Undang 39/2008 tentang Kementerian Negara [Act 39/2008 on the State Ministries].

‘organisational’, as they are complementary. For this bill, the suggested definition is as follows:

‘Administrative organisation’ describes the specific characteristics of an organisation that is responsible for administrative function, either independently or in collaboration with other administrative organisations, in accordance with prevailing laws and regulations.

c. Kementerian (Ministry)

A ‘ministry’ is not defined by the Constitution. *The State Ministries Act* describes a ministry (*Kementerian Negara*, or State Ministry) as a government instrument responsible for conducting specific functions within the government. This definition is too narrow and does not describe the position of a ministry within the machinery of government. The definition of ‘ministry’ needs to be clarified to describe the position, role and function of a ministry. Although each ministry may have its own sectoral law, which specifically describes its administrative role and function, this bill still needs to define the term ‘ministry’ to clarify its specific characteristics. Below is an example clause to define ‘ministry’:

A ‘ministry’ is an administrative institution led by a minister, who is a member of the cabinet. It is responsible for conducting specific administration tasks mandated by the president, in accordance with prevailing laws and regulations.

d. Lembaga Setingkat Menteri (Institutions at the same level as ministries)

There are at least five institutions operating at the same level as ministries, namely the Central Bank (Bank of Indonesia), the National Police of the Republic of Indonesia (POLRI), the State Secretariat, the Attorney General and the National Armed Forces (TNI). However, the term ‘institutions at the same level as ministries’ has not clearly defined in any laws and regulations. Below is a recommendation for its definition:

‘Institutions at the same level as ministries’ are non-ministerial institutions, which have earned an equal level and position to ministries in the central government administrative structure. These institutions

are answerable to the president and directly responsible for specific tasks, in accordance with the prevailing laws and regulations. However, these institutions are not cabinet members.

e. *Lembaga Pemerintah Non-Kementerian (Non-Ministerial Agencies or LPNK)*

Every statute that serves as the legal basis for establishing an LPNK only mentions the term ‘LPNK’, and does not give the general definition and characteristics of LPNKs. Instead, the definition of LPNK was given by a lower hierarchy legal framework—Presidential Regulation (Perpres). The Perpres 103/2001 states that a LPNK is a central government institution created, directly under the president, to perform a specific task, provided by the president.

According to the definition in Perpes 103/2001, the power to establish an LPNK is in the hands of the president. In reality, most LPNKs were statutorily established. Therefore, the decision to create an LPNK is, in reality, not solely the power of the executive. This bill needs to reaffirm executive’s discretion in the creation of LPNKs in the definition of LPNK. This would be important to minimise the growth of LPNKs by returning the power of establishing LPNKs to the president, as opposed to DPR-made legislation. This chapter suggests a definition as follows:

‘Lembaga Pemerintah Non-Kementerian’ (Non-ministerial agencies), hereafter referred to as ‘LPNKs’ are agencies of central government established by the president to conduct specific tasks outside the function of a ministry. In performing its function, an LPNK is answerable to the president and coordinated by a ministry in its relevant area.

f. *Lembaga Non-Struktural (Non-structural Agencies)*

Statutes have established at least 73 LNS’s.⁷⁶⁵ In terms of nomenclature, structure and their positions in the government, LNS’s are greatly diverse. This is largely because of the non-existent guidance from legislation regarding LNS

⁷⁶⁵ See Section 6.3.2.

establishment, the scope of their work and their exact administrative positions. To date, LNS's are independent agencies, ranging from small boards, commissions and committees to larger, independent agencies. They mostly function outside the area of ministries and LPNKs, few of which deal with executive operations, national economy management, corruption investigation and regulatory control. The legislation never clarifies the limitations on the scope of work and functions of LNS's. This chapter suggests the following definition:

'Lembaga Non-Struktural' (Non-structural Agencies), hereafter referred to as 'LNS's' can be either independent or semi-independent agencies. They are responsible for conducting particular functions outside the governance area of a ministry or an LPNK, in accordance with the prevailing laws and regulations.

g. Lembaga Penyiaran Publik (Public Broadcasting Agency)

There are two public broadcasting agencies under the executive arm of government, namely the Television of the Republic of Indonesia (TVRI) and the Radio of the Republic of Indonesia (RRI). These two bodies are considered government agencies and are owned and funded by the national government. Therefore, the law needs to establish the definition of 'Public Broadcasting Agency' to describe their nature, function and administrative position.

h. Pembentukan (Establishment)

This bill needs to address some aspects, including the requirements and procedures for establishing executive bodies at the national level. Article 17 of the 1945 Constitution instructs that provisions related to the establishment, restructuring and merging of ministries, in particular, are to be stipulated in the relevant *Undang-undang* (statute). *The State Ministries Act 39/2008* contains articles addressing the establishment of ministries but they are mostly too general and lacking in detail. Further, there is no guidance from legislation for the establishment of executive bodies other than ministries (such as LPNKs and LNS's). This bill needs to produce requirements for the establishment of executive bodies for both ministries and non-ministerial bodies. More

importantly, the meaning of ‘establishment’ itself needs to be defined and clarified. This chapter suggests that ‘establishment’ be defined as follows:

‘Establishment’ is the process of creating or establishing a ministry, agency or other executive body, by the president or with legislation, according to prevailing laws and regulations.

i. Pengubahan (Restructuring)

Similarly, this law needs to define *pengubahan* (restructuring). The current definition of restructuring in the legislation only applies to ministries, as provided by article 1 of *the State Ministries Act*. The article states that ministerial restructuring is an alteration to the nomenclature of the existing ministry by merging, separating or replacing it with other nomenclature. This definition emphasises restructuring as the alteration of nomenclature instead of as structural changes. Since the definition only applies to ministries, this law needs to establish a definition for ‘restructuring’ that encompasses all executive bodies. The essence of any restructure is organisational changes, so the definition of ‘restructuring’ should reflect the element of change. For example:

‘Restructuring’ is a process of restructuring or reorganising executive bodies and/or their units. It is an alteration to the structure and organisation of executive bodies in accordance with the terms of this law.

j. Pembubaran (Dissolution)

The State Ministries Act contains a few articles about the provisions for a dissolution of a ministry, but they are not applicable to non-ministerial bodies. Hence, the law needs to provide a legal definition of ‘dissolution’ that encompasses all types of bodies. For example:

‘Dissolution’ is a process of abolishing or liquidating a ministry and/or agency in accordance with the terms of this law.

k. Penggabungan (Merger)

Guidance on how to merge institutions is not provided in existing legislation. To establish an effective and efficient government, this law should establish rules for merging executive bodies. Hence, it is important to provide the definition of ‘merger’ itself. The suggested definition is as follows:

‘Merger’ is a process of merging institutions of government, namely ministries, agencies or units within ministries or agencies, in accordance with the terms of this law.

l. Pemerintah (National Government)

The 1945 Constitution and most statutes denote the term ‘*pemerintah*’ (government) as the central government. Many statutes defined ‘the central government’ or ‘government’ as ‘the Government of the Republic of Indonesia.’ This law needs to restate this definition for coherence with other statutes. For example:

The ‘central government’, hereafter referred to as the ‘government’, is the Government of the Unitary State of the Republic of Indonesia.

m. Pemerintah Daerah (Local Government)

The Regional Government Act 23/2014 has handed over some functions to either Provincial or City/Regency Governments. This law stipulates that the Regional Government consists of the Provincial Government, Municipality of City Government and their Regional House of Representatives. Since some authorities and functions of the central government have been decentralised to the Regional Government, it is also important for this bill to restate the definition of the Regional Government from *the Regional Government Act*.

n. Menteri (Minister)

Every piece of legislation in Indonesia states which ministers are responsible for administering that law. This bill falls within the scope of the Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia. Therefore, the minister for this law is the Minister of Administrative and Bureaucratic Reform.

The next part of this section elaborates on the terms for the goals and basic principles (*azas*) in institutional structuring.

7.4.2 Goals and Basic Principles (*Azas*) in Institutional Structuring

Any activities related to institutional establishment and reform should aim to develop a more effective, efficient and accountable governance structure that is able to deliver better services, as well as support the achievement of national goals. Pieces of legislations in Indonesia frequently establish their own *azas* (basic principles) to guide their enforcement. This thesis suggests the following *azas* for this bill:

a. Effective and efficient

A lean and streamlined structure is often viewed as the ideal. The executive bodies in Indonesia are diverse and have grown very large. As resources are limited, achieving effectivity and efficiency is important. Moreover, the public expects the government to be as efficient as the private sector, while maintaining public accountability. Efficiency is the use of resources (budget, personnel, etc.) in a way which minimises waste and optimises resources for their most valuable use, while effectivity is related to the extent of the use of resources to accomplish goals. Therefore, effectivity and efficiency are the basic principles of this bill and need to be acknowledged in the clauses of *azas*.

b. Neutral

The political system has a significant influence on policy-making and it can either drive or constrain reform. The government and the political system are interconnected; the effectiveness of any political system depends on that of administrative organisations. As such, the control system and design of executive bodies are major concerns for political entities.

The process of politics produces political decisions. Eventually, these decisions reflect the will of the government. Bureaucracy, In contrast, is responsible for developing and implementing the policies aligned with political decisions. However, the ideal bureaucracy should be politically neutral, assuring detachment from the vested interests of political influences.

Nevertheless, reorganisation is notorious for being an object of a political battle between contending interests. Therefore, achieving neutrality in bureaucracy could be challenging. *The Civil Service Act 5/2014* stipulates that public officials must be politically neutral—they are banned from being partisan to a political party or supporting a particular political view. Yet, politics retain a strong influence in bureaucracy. As such, this section suggests neutrality as one of the *azas* for this bill.

c. Coherence

Organisations are created to establish an integrated problem-solving mechanism. The government's organisational chart should reflect institutional coherence; it should display a clear relationship and network between organisations. Coherence is an important principle for this law to adopt; it supports efforts to reduce duplication and simplify structures.

The current methods of organisational development produce fragmented organisations. Given the complexity of modern governance, executive bodies need to establish a governance system that eliminates cross-functional boundaries and relies on collaboration between institutions. The fragmented and large organisations of the Indonesian government exist largely because of incoherent legal frameworks, institutions' sectoral egos and the silo-mindset. Therefore, 'coherence' needs to be one of the principles of this bill.

d. Proportional

Maintaining a lean structure for efficiency is essential, but the administrative structure has to be proportional. The government should have the right posture—not too big or too small—with the right function. However, the main concern of any administration should encompass the departmental arrangement.⁷⁶⁶ The focus should be on policy achievement; any organisational change should focus on improving the performance, rather than the size, of organisations.

⁷⁶⁶ Davis and et al (n 538) 37.

Having too many institutions may result in inefficiency and become a potential source of red tape. In contrast, the government may find it difficult to achieve its objectives without sufficient agencies. This is why reorganisation is not only about simplifying organisations. Rather, any departmental arrangements should aim to improve the public service delivery mechanism, as well as improve the performance, professionalism and accountability of public officials.⁷⁶⁷ Sufficient justification should be provided as to why a new agency needs to be established. A lean and efficient organisation is important, but supporting the executive with the right organisational size and function is more important for the government to achieve its goals effectively. Therefore, ‘proportional’ is also an important *azas* for this bill.

e. Professional

Improving the administration is now seen as a continuous activity. One of the goals of any administrative reform is to improve professionalism amongst agencies and public officials to meet the heightened pressure of providing better services to citizens. Hence, professionalism is also an *azas* for this bill.

f. Adaptive, dynamic and innovative

The typical government institution is often regarded as not dynamic, inefficient and slow; the bureaucracy consistently enforces outdated rules and complicated procedures. Neo argued that it is essential to implant the spirit of ‘dynamism’ in the public sector.⁷⁶⁸ Dynamism is characterised by the rise of new ideas and fresh perceptions, sustainable improvement, reactivity, adaptability to new challenges and flourishing of creative innovations.⁷⁶⁹ The adaptive, dynamic and innovative administration will encourage the bureaucracy to execute effective, timely policies and to exercise self-improvement.

Reform can be challenging if the existing system is rigid against changes. It would be difficult for the government to keep up with social changes if their

⁷⁶⁷ Interview with Ahmad Muqowam (n 350).

⁷⁶⁸ Neo (n 169).

⁷⁶⁹ Ibid.

organisations were not flexible. When an agency is established under legislation, it potentially restricts the capability of the government to be dynamic, flexible and adaptable. Therefore, this bill should be able to guarantee flexibility in managing organisations by allowing the administration more discretion to manage their structures. Hence, ‘adaptive’, ‘dynamic’ and ‘innovative’ are also essential *azas* for this bill.

g. Accountable and transparent

Most reforms aim to make the government more accountable and transparent. Many governments around the world have conducted administrative reform according to their own contexts, each with different results and distinct processes. However, most governments shared the common goals for establishing a more efficient and responsive government that is held accountable for its work. ‘Good governance’, ‘participatory’, ‘transparent’ and ‘accountable’ define the process that guides the political and socio-economic relationship. Any reorganisation activity should be conducted in an accountable and transparent manner without any hidden agenda or vested interest. Hence, these two aspects are essential principles to adopt here.

h. Autonomy and decentralisation

According to its constitution, Indonesia is a unitary state in the form of a republic. The Unitary State of the Republic of Indonesia is divided into layers of government, namely central, provinces, municipalities and cities. The local governments (*pemerintah daerah*), which consist of provinces, municipalities and cities, govern their respective areas according to the principle of ‘wider autonomy’ as stipulated by the 1945 Constitution. Local governments are responsible for all administrative functions, except for those stated by the law as the authority of the central government. At this time, the power of the central government is limited to six broad governance areas, namely foreign affairs, monetary and national fiscal, defence, national security, religious matters and justice.⁷⁷⁰

⁷⁷⁰ *Undang-Undang 23/2014 tentang Pemerintahan Daerah* [Act 23/2014 on the Local Governments].

The Local Government Act 23/2014 stipulates that local autonomy is the authority of the autonomous regions to exercise and conduct administrative functions for the interest of their local society, within the framework of the Unitary State of the Republic of Indonesia.⁷⁷¹ The Constitution and *the Local Governments Act* acknowledges that local governments gain ‘autonomy power’ after the bestowal from the central government, based on decentralisation. *The Act 23/2014* defines decentralisation as the handover of administrative functions by the central government to autonomous regions based on ‘autonomy principles’.⁷⁷² It shows that there are administrative functions of the central government delegated to local governments based on autonomy and decentralisation. Therefore, this bill also needs to acknowledge the autonomy and decentralisation principles.

In contrast, Article 26 of *the State Ministries Act* first acknowledged the autonomy for governing principle in relation to the relationship between ministries and local governments, as follows (English translation):

The relationships between ministries and local governments are governed within the framework of a Unitary State of the Republic of Indonesia’s system of government by referring to the principles for the implementation of local autonomy, in accordance with prevailing legislations.⁷⁷³

However, the above clauses only apply to the relationships between ministries and local governments, not to other bodies of the central government, such as LPNKs, LNS’s and other executive bodies. Hence, the bill needs to establish clauses that encompass all of the institutions of the central government and acknowledge the principle of ‘autonomy and decentralisation’.

i. Delegation

The Indonesian constitution stipulates that the president is the head of state who holds the power of government. The president holds the apex of administrative power and the ultimate responsibility of running the government. Article 17 of the 1945 Constitution states that, in running the

⁷⁷¹ Ibid.

⁷⁷² Ibid.

⁷⁷³ *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

government, the president is to be helped by ministers. In other words, the ministers, and other executive bodies, perform their function based on the power delegated by the president. Hence, ‘delegation’ is one of the basic principles for this bill.

j. Better public services

Any institutional reorganisation would be meaningless without a goal to improve public service delivery. The government is under continuous pressure to do more for citizens by providing better public services. Conducting organisational improvement to improve performance and services is necessary for any administration.

7.4.3 Administrative Function

Formulating ideal clauses to address ‘administrative function’ can be difficult because of the entrenchment of current legislation and governance culture. Article 4 of *the State Ministries Act* says that each minister is responsible for a specific function(s), meaning that each ministry already has its own specific area of responsibility. However, duplication still exists; for example, environmental issues are addressed by more than ten ministries and other executive bodies.⁷⁷⁴ In modern and complex governance, collaboration between institutions is obligatory. This bill should be able to facilitate such collaboration. Crosscutting issues that involve many agencies such as terrorism, mitigation of natural disasters and poverty eradication often require horizontal collaboration. This bill should establish clauses for ‘administrative function’ that are able to reduce duplication and ease collaboration by preventing executive bodies from monopolising a particular administrative function. As such, the institutional sectoral ego will be reduced.

7.4.4 Grand Design and Organisational Mapping

The Minister of Administrative and Bureaucratic Reform argued that important resources are often wasted because of poor organisational planning.⁷⁷⁵ This bill can serve as the first logical step for Indonesia to establish a grand administration design.

⁷⁷⁴ See Chapter 5.

⁷⁷⁵ Interview with Asman Abnur (n 352).

The formulation of this design can begin with the identification of executive mandates according to legislation, especially the constitution. Subsequently, the functional relationship and structure of all executive bodies also need to be elaborated on here.

7.4.5 Classification of Organisations within the Central Government

This bill needs to reaffirm the classification of organisations in the central government.

This can be drawn and classified as follows:

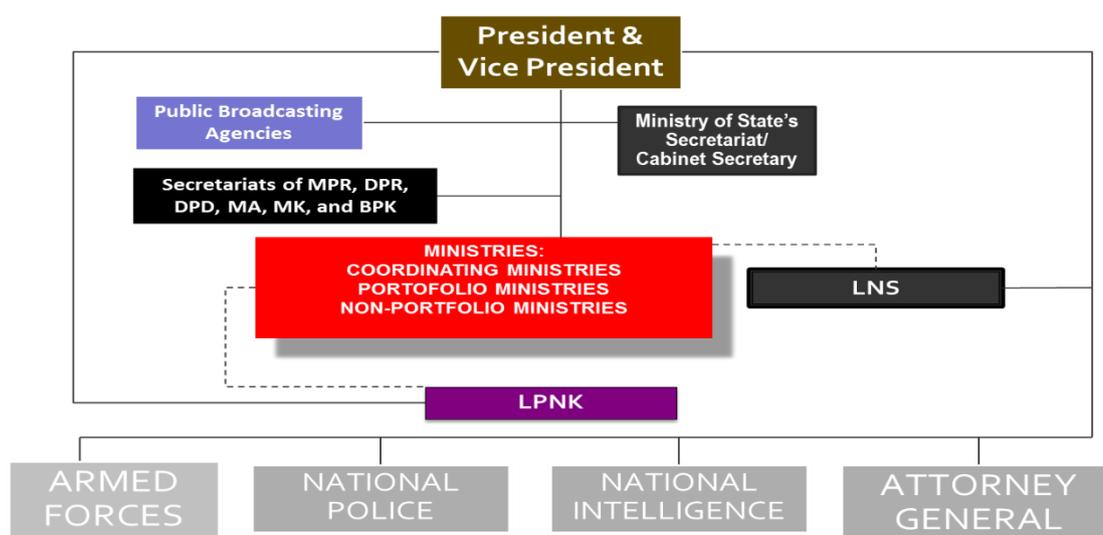


Figure 7-1 Recommendation on the Classification of Organisations

Regarding the classification and position of each type of body, the above figure can be explained as follows:

1. President/Vice President:

The apex of the administration, head of government and head of state, as stated in the 1945 Constitution.

2. Ministries:

There are three types of ministries: (i) coordinating ministries (formed according to certain areas of national priorities), (ii) Portfolio ministries and (iii) non-portfolio ministries. There is also a ministry of state secretariat that manages the president's offices and supports the president's daily activities. The role, function, and power of the portfolio and non-portfolio ministries are provided by *the State Ministries Act 39/2008*. The Act divides ministries into

three clusters according to their governance area;⁷⁷⁶ clusters one and two are portfolio ministries and cluster three is the non-portfolio ministries.⁷⁷⁷ However, this bill still needs to reaffirm the existence of both portfolio and non-portfolio ministries, as well as clarify the position of coordinating ministries in executive structure.

3. Public Broadcasting Agencies:

These are the Television of the Republic of Indonesia (TVRI) and the RRI.

4. Institutions at the same level as ministries:

These institutions include the TNI, the National Police, the National Intelligence Agency and the Attorney General. All are directly under and reporting to the president, as stipulated in their sectoral statutes. Hence, they are part of the executive power, and reorganising these institutions is also subject to this bill.

5. LNS:

There are 73 statutorily established LNS's with different administrative positions, according to the statutes.⁷⁷⁸ They can be either directly answerable to the president, under the president but coordinated by a relevant ministry, under a Ministry or truly independent from the executive. Hence, this bill should decide and provide guidance on how to position LNS's in the administrative structure. This will serve as a reference for deciding the scope of work of LNS's, to avoid overlappin with the work of a ministry or LPNK.

6. LPNK:

Historically, during Soekarno and Soeharto's administrations, it was the president's prerogative right to establish LPNKs to help with a specific function, outside the area of ministerial work but within the proxy of a ministry. Therefore, LPNKs received power from the President. Initially, a relevant ministry coordinated LPNKs. After the fall of Soeharto in 1998, many LPNKs

⁷⁷⁶ *Undang-Undang 39/2008 tentang Kementerian Negara* [Act 39/2008 on the State Ministries].

⁷⁷⁷ *Ibid.*

⁷⁷⁸ See Chapter 6.

became statutorily established. Bearing a constitutional status as ‘directly under the president’, LPNKs rejected coordination from ministries.⁷⁷⁹ This bill will clarify and reaffirm the position of LPNKs as under the president and coordinated by ministries in their relevant areas. This will return the power to establish LPNKs to the president.⁷⁸⁰ As a result, it could prevent the creation of LPNKs by statutes in the future, reduce LPNK growth and provide flexibility for the president in managing executive agencies.

7. Secretariats of the MPR, DPR, DPD, MA, MK and BPK:

As mentioned in previous chapters, the MPR, DPR and DPD held legislative power, while the MA (Supreme Court) and MK (Constitutional Court) held the power of the judiciary. In addition, the Audit Board of the Republic of Indonesia or *Badan Pemeriksa Keuangan* (BPK) is given the power to audit the use of public finances, in all levels of government and other public institutions, by the constitution. The BPK is the highest body responsible for the evaluation of financial management and accountability and it is independent of other branches of power. These high state bodies have their secretariats, who are civil servants subject to *the Civil Service Act*. Apart from the ‘mother institution’, the secretariats of the MPR, DPR, DPD, MA, MK and BPK are considered part of the executive structure. Therefore, reforming these secretariats should also follow the rule set out by this bill.

7.4.6 Reasons for Reorganising

This bill needs to describe the rationales for reorganisation. The following are rationales that can be used to justify reorganisation:

a. No existing institution or unit addressing the issue:

A new agency can be created if no existing body functions in that particular area and the public is demanding that the government provide services in that area. The

⁷⁷⁹ See Section 5.2.

⁷⁸⁰ Ibid.

government must be able to deliver to its citizens, faster and better than before, and the public may not accept an institutional absence.⁷⁸¹

b. Eliminating or reducing duplications:

Reorganising by conducting structural simplification is necessary when overlaps occur. To date, most ministries and agencies tend to maximise the number of units they can have to provide as many possible positions for their top bureaucrats. It can be problematic as it potentially duplicates the units. Eliminating unnecessary departments and merging them into one department is important to reduce duplications.

c. Delivering faster and better services, as well as adapting to social changes:

Society always changes, particularly in the current era of information and social media, and the government is always required to keep pace with changes in society. The public consistently demands better services from the government. Establishing more responsive administration should be a goal of reorganisation. Government organisations need to be dynamic. As such, reorganisation is necessary to improve governance and meet the public needs for better and faster government services.

d. Complying with the international treaty or agreement:

Creating a new agency or conducting restructuring is occasionally necessary to comply with international agreements or treaties, in which Indonesia is taking part and bound to abide. For example, Indonesia is a party to the Convention on Nuclear Safety, in which, Article 8 (Regulatory Body) states:

1. Each Contracting Party shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to Article 7, and provided with adequate authority, competence and financial and human resources to fulfil its assigned responsibilities.
2. Each contracting party shall take the appropriate steps to ensure an effective separation between the functions of the regulatory body and those of any other

⁷⁸¹ Interview with Ahmad Muqowam (n 350).

body or organisation concerned with the promotion or utilisation of nuclear energy.⁷⁸²

To comply with the above provisions, particularly Paragraph 2, the Indonesian government separated the agencies performing regulatory function and the promotion or utilisation of nuclear energy. Before 1997, these functions were conducted by a single agency, the Nuclear Energy Agency (BATAN). In 1997, the implementing law of this convention in Indonesia, *the Nuclear Energy Act 10/1997*, split the two functions by establishing two agencies.⁷⁸³ One is the Nuclear Energy Regulatory Agency (BAPETEN), which functions as a regulatory body in the uses of nuclear energy, and the other is BATAN, which plays a role in the promotion and utilisation of nuclear energy.

e. Changes to the vision and mission of the national government:

When facing new challenges, a country must readjust its vision and mission, and with it, the government organisation.

f. Accelerating the accomplishment of national goals:

Reorganisation is conducted to accelerate the completion of national development plans and policies. After winning the election, the elected government needs to decide their one term (5 year) national development plan, known as the National Medium-term Development Plan (RPJMN). the RPJMN is derived from the 20-year National Long-term Development Plan (RPJPN) and the vision and mission of the current government. National goals often change periodically, along with the establishment of the RPJMN, which is modified to the machinery of government to achieve those goals. A new agency may be required to address a particular issue or abolish existing institutions for a more effective and efficient government.

Reorganisation decisions should not rely on a motive of accommodating vested interests that will make the government less effective and less efficient.

⁷⁸² *Vienna Convention on Nuclear Safety*, opened for signature 20 September 1994, IAEA – INFCIRC/449 (entered into force 24 October 1996).

⁷⁸³ *Undang-Undang 10/1997 tentang Energi Nuklir* [Act 10/1997 on Nuclear Energy].

7.4.7 Reorganisation Procedures

The ideal reorganisation should be free from any vested interests. In this regard, the president is entrusted by the 1945 Constitution with the flexibility to manage the organisations of the executive bodies. Therefore, statutorily establishing agencies may contravene the presidential system adopted by the constitution. As such, a measure to prevent the future establishment of new agencies under statutes—unless there is a strong reason for establishing an agency under the law—must be in place.

The authority to create, merge and abolish ministries and agencies should be held only by the president. On behalf of the president, the MoABR is responsible for assessing administration structure, conducting administrative reform and deciding on the restructuring of directorate generals, bureaus, directorates and other, smaller units. However, to ensure a smooth reorganisation process, the process must be actuated in this bill.

This bill should affirm the constitutional power of the president to create, merge and abolish ministries and agencies. Any proposal of machinery restructuring should be subject to the president's approval, after receiving considerations from MoABR and relevant ministries and agencies for the particular issue. For directorate generals and smaller units within a ministry or agency, the president may delegate his power to reorganise a ministry to MoABR.

The president should solely decide on the establishment of a ministry or agency. However, for establishing a new unit within a ministry or agency (directorate general, directorate, division, bureau, technical service units, etc.), this bill can state that the president delegates the power to restructure to the MoABR. This will simplify the procedure for establishing a new unit, as the president does not need to bother with smaller activities in reorganising and may entrust a ministry with the responsibility for administrative reform. The MoABR can only decide that the establishment of such new unit is necessary if the reasons can be justified and its financial implications, potential duplications and other potential harms have been considered.

This bill provides general steps to restructure the organisation of a ministry or agency. First, a ministry that intends to perform a restructure should propose it to the MoABR and describe its justifications, the problems to address and the current conditions of

the units, including the function or responsibilities, personnel, assets, intra-units' process of business, procedures and other relevant matters. Additionally, it is important to mention possible alternatives other than reorganisation, and the reason to choose reorganisation over such alternatives. The examples of such alternatives can be capacity building, additional personnel, improvement to assets and other facilities, improvement to procedures, etc. Second, after receiving the proposal, the MoABR need to discuss with relevant ministries and agencies such as MoF for financial implications, Ministry of Laws and Human Rights for legal implications, Ministry of National Development Planning for its consistency with national goals and plans, the Civil Service Agency on the issue of human resources, the proposing ministry or agency and other relevant bodies. Finally, upon reflecting on institutional assessments and considerations from those relevant stakeholders, the MoABR may decide whether reorganisation is necessary.

The arrangements for mergers and liquidations should not be too different from those for establishment. Merging and abolishing a ministry or agency should be decided by the president, and by the MoABR for units within a ministry or agency. However, a comprehensive plan on human resources arrangements should accompany the plan to manage the affected bodies. This bill should also require an institutional assessment before the merger to describe the transferred function and reasoning for abolishment. The reasons to conduct abolishment include that the government is no longer responsible for the issue, the private sector could deliver a more effective and efficient function, an existing or potential duplication and that the statutes require abolishment.

7.4.8 The Executive's Role

The executive is responsible for executing most legislative products and has a thorough comprehension of the problems that need to be fixed in its organisation. This legal framework must reaffirm the power of the president and the relevant ministry—the MoABR in conducting institutional reorganisation. The government, through the MoABR, should be allowed to assess and calculate the size of the executive bodies the government needs to complete tasks efficiently and effectively.

7.4.9 The Legislative's Role

Although managing the administration is the executive's domain, the role of legislatures in shaping the administration is significant. Article 20 of the 1945 Constitution gave parliament the power to conduct budgeting and supervisory functions.⁷⁸⁴ Its role in shaping the bureaucracy cannot be undermined. To prevent the government from abusing power and other misconduct, the legislative should conduct an effective supervisory function, or checks and balances, on the government.⁷⁸⁵

There are over ten political parties in the DPR, each with its own agenda, and it is no surprise that bureaucracy is an object of these contending interests.⁷⁸⁶ Accordingly, any check and balance role of the parliament must not involve any vested interests for political or personal gain.⁷⁸⁷ The legislative power should not interfere with the managerial aspect of the government,⁷⁸⁸ except for a greater interest, such as if the government is corrupt and abusing its power. This bill should establish terms that affirm the power of parliament to conduct checks and balances while also preventing the use of this power to interfere in the details of reorganisation. This should prevent the DPR from interfering with the managerial aspect of managing administration and reduces vested interests in reorganisation.

7.4.10 The Public's Role

There is an increasing demand for transparency, accountability and public participation in the making of public policy. Therefore, the public should be given a greater opportunity to express their concerns and opinions in any reorganisation decision, especially if such reorganisation will affect basic public services. The public is the heart of any governance and any good government is built upon the consent of its citizens. As such, the government must strengthen its relationship with citizens.

OECD describes the reasons the government must strengthen its relationship with the public as to improve the quality of public policy, to meet the challenges of the emerging information society, to integrate public input into policy-making, to respond

⁷⁸⁴ *Undang-Undang Dasar Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945].

⁷⁸⁵ Interview with Ahmad Muqowam (n 350).

⁷⁸⁶ Interview with Asman Abnur (n 352).

⁷⁸⁷ Interview with Abdul Kharis (n 401).

⁷⁸⁸ Interview with Bambang Supriyono (n 389).

for transparency and accountability and to improve public trust in the government.⁷⁸⁹ In this regard, the general public, universities, academics and non-governmental organisations may participate in the reform decision processes. This bill should guarantee that the public is allowed to express their suggestions, concerns and even criticisms or objections regarding any reorganisation plan.

7.4.11 Transitional and Closing Provisions

Some provisions of this bill may conflict with some existing statutes, particularly *the State Ministries Act* and sectoral laws of respective institutions. The bill should have transitional provisions that state articles in *the State Ministries Act* inconsistent with this law are revoked by this law. For example, it may state:

Any provisions in *the State Ministries Act 39/2008* that are inconsistent with this law are revoked and deemed no longer valid.

For laws other than *the State Ministries Act*, the bill should state that it would prevail if the matter concerned the organisation of central government. Examples are as follows:

At the time of this law entering into force, any legislation related to the institutional system of the central government is deemed still valid as long as it has not been revoked by, and not contradict, this law.

At the time of this law entering into force, any law and regulation directly related to the issue of organisation of the central government should refer to this law and be amended accordingly.

In addition to transitional provisions, it is also common for any legislation in Indonesia to have a ‘closing provision’ which indicates when the law is entering into force, for example, ‘This law is entering into force on the date of its enactment’. The next section discusses the potential changes that will happen if this bill is passed to become law.

⁷⁸⁹ Joanne Caddy and Organisation for Economic Co-operation and Development, *Evaluating Public Participation in Policy Making* (OECD, 2005) 19.

7.5 New Direction for Reorganisation: Expected Changes in Legal Culture

If it is enacted to become the law, the bill may bring a new direction for institutional reform and ways of managing organisations. The terms of this bill should limit the ability of the DPR to intervene in how agencies are made. In contrast, the executive can freely develop its organisations without any interference from the DPR. This, of course, will raise some questions, such as what if the government abuses its power and engages in enlarging the bureaucracy and how to prevent and control this issue.

Those issues can be addressed by optimising checks and balances, which is the role of the DPR, guaranteed in the 1945 Constitution and affirmed by this bill. The DPR holds the power to conduct checks and balances by conducting budgeting and supervisory functions on the government. It has a strong power to ensure that resources are used efficiently and effectively by the government. If the DPR discovered that the government was using too much taxpayer money on maintaining a large number of government organisations and government programs were executed ineffectively because of duplications, the DPR could instruct the government to use resources efficiently and simplify its organisations. The DPR can even hold and freeze the government's budget, as stipulated in the Constitution and *the National Financial Act*.

In contrast, with its checks and balances power, the DPR can still recommend that the government create an agency for a particular issue if the legislatures find that the government has not addressed the issue. To date, the creation of an agency through statutes is the root of inefficiency and the cause of the mushrooming bureaucracy in Indonesia. This bill should stipulate that the DPR must refrain from including the terms for establishing new agencies in laws that they initiate. Instead, the management of organisations of administration should be entrusted to the executive power itself. If anything goes wrong with how the government manages its organisations, the DPR, as a legislative power, still has the power to correct it with its power to conduct checks and balances. Hence, it will return the institutional management of government to the presidential system principles of the constitution.

The new law can serve as a starting point to conduct reform. It may seem unnecessary if all political stakeholders—both in executive and legislative—have reached maturity

in governing and have implemented the principles of democracy. Such democracy maturity, if achieved, can make stakeholders fully aware of the importance of effectivity and efficiency in managing administration. Administrative reform certainly needs strong commitment and support from those stakeholders. A reform may fail to achieve its goals if the reform stakeholders do not understand the necessity of building an efficient and effective government. The executive and the legislative in Indonesia have not reached such democracy maturity as explored in this thesis and hence the new law is necessary.

Every government is required to be responsive, efficient and effective in delivering its programs and policies. Therefore, the government should have an effective organisational configuration. Successful reorganisation will depend on the capability to overcome political and legal issues in reorganisation. The organisations of the Indonesian central government have grown large over the years. This large administration has resulted in duplications and inefficiencies in the use of the state's budget. The Indonesian government should start to consider downsizing to fix current malaise in its bureaucracy. Accordingly, the legal framework discussed in this thesis is designed to pave the way for better institutional reform to develop the most efficient and effective government.

Efficient organisation will help the government to simplify processes and eliminate useless processes. The right institutional configuration enables cooperation and interoperability of processes between institutions. These are possible to achieve by changing the current legal framework. Legal changes to support the reform are important to change the culture, mindset and customs of how organisations are made. This new law is also essential to increase commitment from all reform stakeholders. As such, this new framework will put the progress of reform back on track for achieving national development goals.

Although civil servants should be neutral, top bureaucrats are often engaged with politics and political processes. The oligarchic structure of political elites in Indonesia can be a significant hurdle for governance. The government may find itself helpless to make decisions that are free from the vested interests of elites. As such, attempts to establish a workable government are also constrained by the influences and interests

of political elites.⁷⁹⁰ Politicians and top bureaucrats may fear that reform threatens their position, power and popularity. It is no surprise that their support of reform is often insincere and they exercise caution to conduct reform without sacrificing their own ‘comfort.’ Many of them hide their agencies under the protection of legislation. Many agencies have a statute that protects their organisation. These are the issues that need to be addressed by the bill suggested here. Without changing the current legal framework, it may become difficult to modify the current mindset and legal culture related to institutional reorganisation.

7.6 Chapter Summary

Indonesian administrative reform needs the support of a legal change—a new framework to change the existing legal culture of law-making related to government organisations. This measure is important to close the gap of silo-minded laws and the urgency to have the most efficient and effective organisations. Sectoral statutes protect many executive bodies. A new legal framework in reform will change the culture, mindset and customs of how organisations should be built. To provide a consolidated reorganisation, legislation should not mention the terms of establishing new agencies.

The solution of developing a new legal framework for reform, as proposed in this chapter can serve as a starting point to commence reform. The purpose of this new law is to set up principles and requirements in conducting reorganisation and hence the effect the suggested law is to act as the first step to change legal culture related to reorganisation. This law can serve as a bridge to build reform commitment from all reform stakeholders.

⁷⁹⁰ Mietzner (n 225).

Chapter 8: Conclusion

8.1 Introduction

This chapter concludes this thesis by summarising the key findings according to each research question. It also provides some recommendations in light of the findings and aligned with research objectives. Then, it will provide chapter limitations and direction for future research, followed by concluding thoughts of the author. This thesis has addressed the research questions introduced in Chapter 1:

1. Does the legislation and surrounding political interests constrain reorganisation in Indonesia?
2. Would a bloated bureaucracy result in the need to reform and what realistic reform measure can be implemented to overcome the political and statutory challenges facing reorganisation?

The preceding chapters have outlined research findings in detail. This thesis argues that successful bureaucracy reform depends on the capability to overcome political and legal challenges facing institutional reorganisation. The critical factors and constraints to the reorganisation of government institutions in Indonesia, specifically for political and statutory barriers, are summarised in the following sections under each of the research questions.

8.2 Review of Key Findings

8.2.1 The First Research Question

The findings of the first research question affirmed that legislation and the surrounding political interests constrain reorganisation.⁷⁹¹ Indonesian government bodies have become so large because legal rules have been used to create structures.⁷⁹² There are laws in place that provide preservation of a large number of executive bodies.⁷⁹³ These laws state the establishment, nomenclature or the authority of a particular ministry or

⁷⁹¹ See findings in Chapters 5 and 6.

⁷⁹² See interview answers from Prasodjo in p. 197.

⁷⁹³ See findings in Chapters 6.3.2 and 6.4.

agency. Reforming such institutions first requires amending or revoking legislation linked to their organisation.

The process of law amendment (and revocation) is equal to passing a new law. It requires a political process to achieve another consensus between branches of power. Hence, reorganisation can imply more than a plain administrative measure. Politics and statutes have a significant influence in shaping the bureaucracy and they also exercise too much control over the bureaucracy.

Establishing effectivity and improving efficiency is a challenge, as the government does not have the flexibility to manage its bodies. Laws can either support or constrain reorganisation. The statutory problems surrounding the reform in Indonesia have existed over years and these problems were most likely because of the legal culture of law-making.

It has been commonly assumed that legislation often reflects the vested interests of political forces and that these interests dominate the management of the government. Unfortunately, such interests sometimes contradict the real organisational needs of the government.⁷⁹⁴ New agencies are formed by legislation to create top-echelon jobs for the potential affiliations of a particular political party, to return favours during the election or to have someone as a puppet in the administration to benefit the party.⁷⁹⁵ Reducing the size of government may help to improve the situation; with less budget, there will be less incentive for rent-seeking.

Since the government is rather powerless when discussing bills with the DPR, it may feel reluctant to push its reform agenda through the bill that is being discussed.⁷⁹⁶ This makes it difficult to filter the DPR's intention to insert provisions for the establishment of new agencies in statutes. In addition, the interview processes in this study observed that political and statutory problems constraining reform include silo-mindset and sectoral ego, lack of reform commitment, disharmony of laws, insufficient legislation support and reorganisation legal culture.

⁷⁹⁴ See interview answers in Chapter 4.3.

⁷⁹⁵ See Chapters 4.4 and 4.5

⁷⁹⁶ See Chapters 4.5, 6.2.2, and 6.3.1.

8.2.2 The Second Research Question

The second research question findings indicated that reorganisation needs a legislation reform to overcome its political and statutory challenges. Because of the political and statutory problems surrounding organisations, the government has grown too large. Indonesia still has too many agencies, owing mainly to significant job duplications among them.⁷⁹⁷ As resources are limited, achieving effectivity and efficiency is important and it would be unwise to spend a lot of the budget maintaining the vast government organisations.

The existing legislation framework did not provide significant support for reform. The spirit of efficiency is not evident in statutes; many of these have contributed to the creation of massive and fragmented organisations, resulting in overlaps and duplications.⁷⁹⁸ The use of statutes to create government bodies have undermined the presidential system adopted by the 1945 Constitution and are slowly reducing flexibility in organisational management. However, it is not too late to reform.

The reform may succeed if political constraints are well-managed and the laws are redesigned to reduce impediments. To address the political and statutory problems, the Indonesian government needs a new legal culture of reform. To change this legal culture, Indonesia needs to redesign the law by establishing a new legislation framework to support reform.⁷⁹⁹

The future of reform depends on the government's ability to address political and legislation challenges of reorganisation. Strategically, the government needs support from other political forces, such as parliament, political parties and the public, to conduct reform. Therefore, reform visions capable of unifying all reform stakeholders must be in place.

Establishing a lean and efficient structure is a difficult task. Yet, it is not impossible. To do this, pragmatic interests in organisations should be minimised. This can be done by returning the process of creating agencies to that described in the 1945 Constitution. In this regard, legislation reform is required to change the current reorganisation legal

⁷⁹⁷ See interview answers in p. 83, 95, also see findings in Chapters 4.5 and 5.4.

⁷⁹⁸ See Chapters 5.2 and 6.5.

⁷⁹⁹ See Chapters 7.2 and 7.3.

culture by developing a new law that serves the purpose of bridging the gap of sectoral-perspective statutes and the need for reform. The root of the problems studied here is the legislation, which is essentially a political product.⁸⁰⁰ If the government is eager to solve the problems examined in this study, it should first address statutes linked to reorganisation.

This thesis has established key points for the proposed new law, the Bill on Institutional System of the Central Government Law. Sectoral statutes protect many executive bodies. The purpose of this suggested new legislation is to set up guiding principles of reorganisation.⁸⁰¹ The effect of this is that the new legal framework will change the culture, mindset and customs of how organisations should be built. To provide flexibility and a consolidated reorganisation, it is crucial for statutes not to mention the terms of establishing new agencies. Reorganising the organisation of executive bodies is constitutionally the executive's domain. Hence, the government should be given the flexibility to manage its organisations, as it has a thorough comprehension of the problems that need to be fixed in its organisations.

The new law serves as a starting step to conduct reform. If the bill proposed in this thesis is developed into law, it can be a sign that both sides of power—executive and legislative—are on the same page of commitment to reform. The law might no longer be needed if all political stakeholders—executive and legislative—have reached maturity in governing, have implemented the principles of democracy and are fully aware of the importance of effectivity and efficiency. Bureaucracy reform requires strong commitment and support from both executive and legislative. It might be difficult to achieve the reform goals if the relevant stakeholders fail to understand the necessity of building an efficient and effective government.

8.3 Recommendations

This thesis has highlighted the problem of how politics and statutes constrain reorganisation. It will ignite the debate that something need to be done to reduce the bloating of the Indonesian government. Politics and legislation frameworks have contributed to the creation of large organisations with potential duplications. This

⁸⁰⁰ See Chapter 7.3.

⁸⁰¹ See Chapter 7.4 to see suggested reorganisation principles and other key points of the suggested bill.

shows there is a need for reorganisation. For more consolidated reorganisation, future statutes should not include the terms of establishing new agencies and not explicitly mention the name of a specific institution for a particular issue. The 1945 Constitution should be the primary reference in the making of a new government body, meaning that the establishment of a new ministry or agency is subject to the decision of the president. The Constitution applies a presidential system, which bestows the president as the apex of the executive the power to govern the administration, to appoint ministers and to create or dismantle ministries and agencies.

Because the DPR have a stronger power than the government in law-making, the government may feel reluctant to push its reform agenda through the bill that is being discussed with the DPR.⁸⁰² The imbalance power between the legislature and the executive prevents the government from imposing a filter to the idea of establishing new agencies, proposed by DPR in their bills.⁸⁰³ Therefore, the government needs to be firm and have a strong argument to filter proposals for new agencies by providing evidence that the budget cannot afford to have more agencies, or that it will become a potential duplication.

In the Indonesian presidential system, the executive should have the flexibility and full authority to manage its bodies. While reform commitment from all stakeholders is essential, it should first come from the executive as they hold control of the administration. The reform requires bureaucrats with a sincere commitment to reform. Changes in the reform process can be uncomfortable, but they can be made acceptable if the goals of reform are clear and widely accepted by stakeholders.

This thesis recommends that the Indonesian government develop a new legislation framework to support reorganisation and overcome the political and statutory barriers to reform. In this regard, it recommends that the bill discussed in Chapter 7 be developed further to become the law. If the law recommended by this thesis is passed and the government is given its independence and flexibility to manage organisations, the control and supervision of the DPR over the government are still relevant and need to be optimised. While managing administration is the power of the government, the

⁸⁰² See Chapter 4.5.

⁸⁰³ See Chapter 6.2.2.

legislative function of the DPR cannot be undermined. The constitution gave the DPR the power to conduct budgeting and supervisory functions. To ensure the government is not abusing power and to prevent other misconduct, the legislative should conduct checks and balances on the government effectively. The DPR needs to ensure the efficient use of resources. If it is found that public expenditure is largely spent on maintaining inefficient organisations, the DPR needs to instruct the government to use resources efficiently by simplifying organisations. In some cases, the DPR has the power to freeze the government budget. With its check and balance power, the DPR can recommend that the government create an agency for a particular issue. However, the DPR should no longer use legislation for pushing the creation of new agencies.

8.4 Limitations and Direction for Future Research

The conclusions outlined in this study must be considered within the context of certain limitations. First, this study is context-specific to the Indonesian political and administrative system. As the interviews were conducted in the second and third years of this research (in 2017 and 2018), and this study was started in 2016, it is possible that some events were missed, forgotten or are no longer relevant.

Second, data were collected mainly from in-depth interviews, and thus, rely on the interviewees' experience and memory. In case some events may have been incorrectly described by the interviewees, the researcher have corroborated other sources and interviewees to ensure that the thesis reflects the correct views.

Third, this project involved a small number of participants (14 interviewees). However, they were selected based on their capacity to conduct or influence the direction of institutional reform in Indonesia. While these interviewees were of diverse backgrounds, this project would certainly have benefitted if it was able to obtain additional participants, particularly for exploring more sensitive issues such as corruption, which influenced how the organisations were built.

This thesis takes note that corruption (including rent-seeks) is a major problem surrounding the bureaucracy. Corruption is an important factor that influences how the law is made, as affirmed by interviewees.⁸⁰⁴ Whilst it has been identified as a major

⁸⁰⁴ See p. 92.

issue in governance, the sensitive issue of corruption is not explored further to maintain the focus of the research in answering research questions.

Similarly, the proposed bill also excluding terms for addressing corruption. This is because there are already other specific laws addressing corruption, such as Criminal Code Law and Anti-Corruption Law. The Article 2 of the latter is even very harsh in addressing corruption; it stipulates that corruption is an act of crime that attracts capital punishment.⁸⁰⁵ Analysis on the extent of the effectivity of anti-corruption law is an area beyond the focus of this study. However, as noted in Chapter 7, the bill proposed in this thesis is a starting point to commence reform. It acts as the first step to change the legal culture in reorganisation. Eventually, it will help to reverse the ‘culture of corruption’ in reorganisation and serves as a bridge to build reform commitment from all stakeholders.

Last, the researcher knew some of the interviewees personally. While this may affect the accuracy of analysis of the situation being studied, care has been taken to minimise subjectivity. In dealing with the problem, the researcher interpreted what the interviewees said and then checked his interpretation with statutes and literature. This process linked findings from interviews with general concepts available in the literature and legal rules. However, as the findings also contain the view of the researcher, in most of the study, it only offers one of many possible explanations. Like other qualitative studies, another researcher can draw a different conclusion based on the same data. As such, it is difficult to generalise the findings in a statistical form and logically.

Another limitation has been that it was not possible to test the recommendation made by this thesis. However, it is important to note that the researcher was familiar with the situation being studied because of his previous and current employment at the Ministry of Administrative and Bureaucratic Reform. As a result, he has inside knowledge and experience regarding the situation about the progress of institutional reform. Therefore, he is able to judge why suggested solution is likely able to resolve the problem. This solution was also discussed with all the interviewees and most of

⁸⁰⁵ *Undang-Undang 31/1999 tentang Pemberantasan Tindak Pidana Korupsi* [Act31/1999 on Eradication of Corruption / Anti-Corruption Act]

them agreed, especially the respondents from the executive, academia and the NGO's. Some interviewees, although they agreed in principle, however, they pointed out the difficulties and obstacles. As discussed, over the years the legislative has always attempted to accommodate their interests in the organisational design of the government. Passing this law to the DPR can be difficult as the law may seem controlling the DPR's involvement in the government machinery.⁸⁰⁶ The political parties in the DPR might oppose this law if they thought it would restrict their ability to formulate legislation that includes the terms for establishing a new body.⁸⁰⁷

This thesis opens up several possibilities for further research. First, it would be interesting to study how the findings outlined in this study are put into practice in reforming the bureaucracy in Indonesia. This will feed the curiosity to understand the extent of the applicability of the core principles in this thesis. Second, one could study the leading role of the executive through the MoABR in conducting reorganisation. Third, further study on the applicability of the new legal culture in different settings can provide a better understanding of how certain legal cultures affect bureaucracy reform.

8.5 Concluding Thoughts

Any taxpayer wants the tax they paid to be used efficiently by their government for the benefit of the public. Citizens do not want their government to use resources inefficiently, but they demand better services from their government. Hence, the inefficient use of the budget to manage large organisations is unwise. Having too many agencies is a potential source of duplication of function, and some issues are too crowded to be handled by too many agencies.⁸⁰⁸ The government is expected to satisfy its citizens by delivering services. Therefore, citizens should not be confused by the intricate processes of multiple institutions for a single service.

The Minister of Administrative and Bureaucratic Reform says that a large amount of public expenditure has been used to maintain the vast and massive bureaucracy. Having too many agencies addressing the same issue means that there are excessive

⁸⁰⁶ See interview answers from Prasodjo in p. 92 and interview answers from Kharis in p. 201.

⁸⁰⁷ See Chapter 7.3

⁸⁰⁸ See Chapter 5.

channels to implement policy and deliver public services. Some of the departments of the Indonesian government, to some extent, are created based on desire instead of the real necessity of the administration.

It is never too late to reform. The Indonesian government should start to make its organisations more efficient while still able to execute policies effectively. Effective and efficient organisation will help the government simplify processes and eliminate useless processes. A lean and appropriate framework of structures makes cooperation between elements of the bureaucracy possible, produces interoperability and is crucial to save taxpayers' money. The assumption is that a reduction of structures and personnel will result in savings in the government's budget. Providing flexibility for the government to eliminate unnecessary agencies has the potential benefit of reducing public expenditure. Therefore, legislation should not restrict the flexibility of managing administration.

There is always a limit for any government to manage its organisations. The Indonesian government may not be able to afford to have another agency that has the same function as an existing one. The money spent on maintaining unnecessary agencies is better spent on much greater purposes, like improving education, health, welfare and other basic social services.

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Interview with Adi Budiarso, Chief of Transformation Officer (CTO), Ministry of Finance of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 5 May 2017)

Interview with Ahmad Muqowam, Member of the House of Regional Representative (*Dewan Perwakilan Daerah* (DPD) or the Senates), Head of Committee I DPD (Mas Pungky Hendra Wijaya, Jakarta, 3 May 2017)

Interview with Arief Wibisono, Head of Foreign Trade Law Division, Ministry of Trade of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 25 April 2017)

Interview with Asman Abnur, Minister of Administrative Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 26 April 2017)

Interview with Bambang Supriyono, Professor of Public Administration, Dean of the Faculty of Administration, Brawijaya University, Indonesia (Mas Pungky Hendra Wijaya, Malang, 21 April 2017)

Interview with Diah Arianti, Head of Division for Religion, Education, and Technology, Ministry of State Secretariat of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 20 April 2017)

Interview with Eko Prasodjo, Former Vice Minister of Administrative and Bureaucratic Reform of the Republic of Indonesia, Professor of Public Administration, Dean of the Faculty of Social and Political Science, University of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 3 May 2017)

Interview with Erni Murniasih, Project Manager, Kolaborasi Masyarakat dan Pelayanan untuk Kesejahteraan (KOMPAK) [Public Collaboration and Services for Welfare] (Mas Pungky Hendra Wijaya, Jakarta, 28 April 2017)

Interview with Rini Widyantini, Deputy Minister for Administrative and Bureaucratic Reform—Institutional Affairs and Governance, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 4 May 2017)

Interview with Riris Khatarina, Senior Researcher for the House of Representative (DPR) (Mas Pungky Hendra Wijaya, Jakarta, 21 January 2018)

Interview with Teguh Widjinarko, Special Advisor / Expert Staff for the Minister of Administrative and Bureaucratic Reform, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 18 April 2017)

Interview with Vera Yuwantari, Assistant to Deputy Minister / Director for Institutional Assessment—Human Capital and Cultural Development, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 17 April 2017)

Interview with Yanuar Ahmad, Assistant to Deputy Minister for Institutional Affairs and Governance / Director for Institutional and Governance Policy Formulation, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia (Mas Pungky Hendra Wijaya, Jakarta, 17 April 2017)

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Every reasonable effort has been made to acknowledge the owners of copyright material. I would be pleased to hear from any copyright owner who has been omitted or incorrectly acknowledged.

Appendices

Appendix A Initial Interview Plan

Interviews will be conducted according to the following plan:

1. Establishing rapport:
 - a. Greetings and general introduction.
 - b. Information about the study.
2. Participant to sign a consent form.
3. Topics to be covered in the interview:
 - a. Participant background:
 - i. General information background (age range, sex, education, etc).
 - ii. Professional background (role and position).
 - b. Overview of the Indonesian Bureaucracy Reform and Institutional Reorganisation in Public Sector:
 - i. The goals of bureaucracy reform, particularly in the area of institutional changes.
 - ii. Current progress and achievement of institutional reform.
 - iii. What is challenges and obstacles to reform?
 - c. Current practice on institutional reorganization:
 - i. Overview of the current structure of the Indonesian bureaucracy.
 - ii. What makes an effective and efficient organisation in public sector?
 - iii. Business processes between and intra ministries and agencies.
 - iv. Procedures in conducting restructuring and organizational changes.
 - d. Political and Legal Challenges in Institutional Reorganization:
 - i. The current administration political will on bureaucracy reform.
 - ii. Public leader's support for administrative reform.
 - iii. Support from both executive and legislative branch of powers to reform.
 - iv. Political motives for reform.
 - v. Political and legal aspects that shape governance structure in Indonesia.
 - vi. The current legal framework for reform.
 - vii. Problems of disharmony of laws and policies.
 - viii. What are possible solutions?

Appendix B Participant Information Sheet



Curtin University

Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganisation

PARTICIPANT INFORMATION STATEMENT

HREC Project Number:	HRE2016-0474
Project title:	<i>Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganization</i>
Principal investigator:	<i>Professor Gabriël Moens, Professor of Law, Curtin Law School</i>
Student researcher:	<i>Mas Pungky Hendra Wijaya</i>
Version number:	<i>1</i>
Version date:	<i>1 November 2016</i>

What is the Project About?

Governments are required to be effective and efficient in their organisation. This effective institutional organisation is an important requirement for effective reform. However, reforming the bureaucracy in Indonesia is not easy since there are political and legal impediments in conducting reorganization in government institutions. Bureaucracy reform may succeed if political constraints are well-managed and the laws are redesigned to reduce impediments to successful bureaucracy reform. This research will examine critical factors and constraints of reorganization of government institutions in Indonesia, specifically for political and legal barriers to institutional restructuring and argue that successful reform will depend on the capability to overcome political and legal issues in reorganization.

This research is designed in a qualitative study that expected to find the identification of political and legal challenges in conducting institutional reform and examine the extent of those challenges that shape the governance structure of the Indonesian bureaucracy and how they constrain the reformation of the public sector in Indonesia.

This research will contribute to the literature of administrative law and institutional reform in a number of ways. First, this research will provide knowledge of key determinants and challenges in reforming organisation of the government institutions in Indonesia. Secondly, it will provide identification of political and legal aspects that influence institutional reform in the Indonesian government. Some studies have included investigation of political and legal aspects of reform in developing countries. However, the extent to which political and legal features shapes the public sector governance in Indonesia, particularly in organizational changes, has not been thoroughly studied.

To the best of knowledge, none of the previous studies undertaken in the study area have included key determinants and deep analysis to political and legal aspects of Indonesian government institutional reform, nor providing recommendation for the solutions of political and legal problems in conducting institutional reforms. This study will achieve research significance by filling these important knowledge gaps. It will also contribute to finding best solutions to political and legal challenges in conducting organizational changes. The outcome of this study will also be beneficial for policy makers in developing good governance as well as harmonising current legal rules of institutional structure in the bureaucracy.

For the purpose of this research, ten interviewees are required to participate in this research. They are selected based on their capacity to conduct or influence the direction of institutional reform in Indonesia, these are:

1. Minister and its deputy at the Ministry of Administrative Reform of the Republic of Indonesia.

2. Those who work at the director-level at the ministries/agencies which are currently conducted reorganization.
3. Academics in institutional reform and administrative laws in Indonesia.
4. A Member of Parliament from the 2nd Commission of the House of Representatives.

Who is doing the Research?

The project is being conducted by Mas Pungky Hendra Wijaya, supervised by Professor Gabriël Moens (main supervisor) and Dr Prafula Pearce (co-supervisor). The result of this research will be used by Mas Pungky Hendra Wijaya to obtain Doctor of Philosophy from Curtin University. His study is funded by the Indonesian Government through the Indonesian Endowment Fund Scholarship scheme (*Lembaga Pengembangan Dana Pendidikan – LPDP Scholarship*), provided by the Ministry of Finance of the Republic of Indonesia.

Why am I being asked to take part and what will I have to do?

You have been asked to participate in this research as your profile met the condition we are researching. The study will take place at a mutually convenient location. Should you decided to be a respondent for this study, you will be required to describe your experience in developing institutional reform policies or conducting institutional reorganization. You will be required to explain any political and legal impediments that you may encounter in conducting reorganization in public sector institutions. The interviews will take time for up to 60 minutes.

We will make a digital audio recording so we can concentrate on what you have to say and not distract ourselves with taking notes. This is also to ensure the accuracy of the information as well as to prevent any misinformation or misunderstanding. The interviews will be transcribed.

There will be no cost to you for taking part in this research and you will not be paid for taking part. However, you will be provided a souvenir as a token of appreciation.

Are there any benefits to being in the research project?

There may be no direct benefit to you from participating in this research. However, this research can be used to express ideas, opinions, and concern related to bureaucracy reform, particularly in the area of organizational changes. We hope the results of this research will allow us to contribute in finding best solutions to political and legal challenges in conducting organizational changes. The outcome of this study will also be beneficial for policy makers in developing good governance as well as harmonising legal rules of institutional structure in public sector.

Are there any risks, side-effects, discomforts or inconveniences from being in the research project?

There are no foreseeable risks from this research project. We have been careful to make sure that the questions and topics in this interview do not cause you any distress. But if you feel anxious about any of the questions, you do not need to answer them. Apart from giving up your time, we do not expect that there will be any risks or inconveniences associated with taking part in this study.

Who will have access to my information?

The information collected in this research will be identifiable. This means that any information we collect that can identify you will stay on the information we collect and it will be treated as confidential and used only in the project unless otherwise stated. We can let others know this information only if you say so or if the law says we need to. All information will be stored securely at Curtin University. The following people will have access to the information we collect in this research: the research team and, in the event of an audit or investigation, staff from the Curtin University Office of Research and Development.

Electronic data will be password-protected and hard copy data will be kept in locked storage. The information we collect in this study will be kept under secure conditions at Curtin University for 7 years after the research has ended and then it will be kept indefinitely. As a participant, you have the right to access, and request correction of, your information in accordance with relevant

privacy laws. The results of this research may be presented at conferences or published in professional journals.

Will you tell me the results of the research?

We will write to you at the end of the research in about 6 months and let you know the results of the research. Results will not be individual but based on all the information we collect and review as part of the research. The results of this research may also be available in a publication.

Do I have to take part in the research project?

Taking part in this research project is voluntary. It is your choice to take part or not. You do not have to agree if you do not want to. If you decide to take part and then change your mind, that is okay, you can withdraw from the project. You do not have to give us a reason; just tell us that you want to stop. Please let us know you want to stop so we can make sure you are aware of any thing that needs to be done so you can withdraw safely. If you choose not to take part or start and then stop the study, it will not affect your relationship with the University, staff or colleagues. If you chose to leave the study we will use any information collected unless you tell us not to.

What happens next and who can I contact about the research?

If you decide to take part in this research we will ask you to sign the consent form. By signing it is telling us that you understand what you have read and what has been discussed. Signing the consent indicates that you agree to be in the research project. You will be given a copy of this information and the consent form to keep.

Any inquiries for this research can be addressed to:

Principal Investigator	Co-Supervisor	Researcher/Student
Professor Gabriël Moens	Dr Prafula Pearce	Mas Pungky Hendra Wijaya
Department of Law – Curtin Law School	Department of Law – Curtin Law School	Curtin Law School

Curtin Business School	Curtin Business School	Curtin Business
Curtin University	Curtin University	School
Email:	Email:	Curtin University
Gabriel.Moens@curtin.edu	Prafula.Pearce@curtin.edu	Email:
.au	u.au	p.mas@postgrad.curtin.edu.au

Curtin University Human Research Ethics Committee (HREC) has approved this study (HREC number 2016-0474). Should you wish to discuss the study with someone not directly involved, in particular, any matters concerning the conduct of the study or your rights as a participant, or you wish to make a confidential complaint, you may contact the Ethics Officer on (08) 9266 9223 or the Manager, Research Integrity on (08) 9266 7093 or email hrec@curtin.edu.au.

Appendix C Supporting/Permit Letter from Ministry of Administrative and Bureaucratic Reform



KEMENTERIAN PENDAYAGUNAAN APARATUR NEGARA DAN REFORMASI BIROKRASI REPUBLIK INDONESIA

JALAN JENDERAL SUDIRMAN KAV. 69, JAKARTA 12190, TELEPON (021) 7398381 - 7398382, FAKSIMILE (021) 7398323
SITUS [http : //www.menpan.go.id](http://www.menpan.go.id)

Ref. No: B.3987/D.II.PANRB/12/2016

Jakarta, B December 2016

Curtin Law School
Graduate Research School
Office of Research and Development
Curtin University
Kent St, Bentley, WA, 6102

Dear Sir/Madam (To Whom It May Concern),

Maş Pungky Hendra Wijaya is a civil servant for *Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi* (Ministry of Administrative Reform of the Republic of Indonesia) who is concurrently a PhD Student at Curtin University. This letter is to confirm that he is permitted to conduct fieldwork or data collection for his PhD research with the title: "**Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganization**"; at any period of his study.



Thank you,

Kind regards,

Rini Widyantini, SH, MPM
Deputy Minister,
Institutional Affairs and Governance
rini.widyantini@menpan.go.id

Appendix D Confirmation of Candidacy

See Research Student Profile:

Research Student Profile				Curtin University	
Student ID:	18544224	Name:	Mas Pangky Hendra Wijaya	Profile Printed: 06 November 2018	
Contact Address:	29 Caporn St CRAWLEY WA 6009	Phone:	+622177829303 (H) +62217398381 (W) 0426481103 (M) +62217398305 (FAX)		
Date of Birth:	19 October 1979	e-mail:	p.mas@student.curtin.edu.au student provided email: pungkyh@yahoo.com		
Course:	DR-BUSLAW v. 1 Doctor of Philosophy - Business Law	Owning Organisation:	1345		
Course Status: ADM	Course Start Date: 29/02/16	Academic Status: Good Standing			
Max Funded EFTSL: 4.00	Total EFTSL: 2.84	Prior EFTSL This Uni: 0.000	Prior EFTSL Other Uni: 0.00		
Liability Category Description (Course):		Intl Onshore Fee Paying			
Student Status: 310		Date set: 01-November-2017			
<small>Fee-paying overseas students. A fee-paying overseas student not sponsored under a foreign aid program, and including students with awards: IPRS; SOPF; Australian-European Awards Program; and the Commonwealth Scholarship and Fellowship Plan</small>					
Sponsor: (9878) Indonesia Endowment Fund for Education (LPDP)		Start Date: 01/02/16	End Date: 28/02/20	Percentage: 85.00	
		Sponsored Spk: (319288-Ver 1) Doctor of Philosophy - Business Law			
Sponsor: (2716) Curtin University - CBS Indonesia LPDP scholarship		Start Date: 01/01/17	End Date: 28/02/20	Percentage: 15.00	
		Sponsored Spk: (319288-Ver 1) Doctor of Philosophy - Business Law			
ENROLMENT IN THESIS - STUDY RATES					
LAWS7000	v. 1 Doctoral Thesis - Law	Attempt No: 1	Status: ENR		
Thesis Title: Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganization					
Year	EP	Start Date	End Date	Study Rate	
2016	1	01/01/2016	28/02/2016	0.00	
2016	1	29/02/2016	30/06/2016	1.00	
2016	2	01/07/2016	31/12/2016	1.00	
2017	1	01/01/2017	30/06/2017	1.00	
2017	2	01/07/2017	31/12/2017	1.00	
2018	1	01/01/2018	30/06/2018	1.00	
2018	2	01/07/2018	31/12/2018	1.00	
2019	1	01/01/2019	30/06/2019	1.00	
2019	2	01/07/2019	31/12/2019	1.00	
2020	1	01/01/2020	28/02/2020	1.00	
2020	1	29/02/2020	30/06/2020	1.00	OT
COURSEWORK HISTORY FOR THIS COURSE					
Year	Study Period	Spk Cd	Vers. Spk Title	Credits	Status
2016	Semester 1	MGMT6043	2 Advanced Qualitative Research Methods	25.0	PASS
2016	Semester 1	MGMT6044	2 Introduction to Business Research Methods	25.0	PASS
LEAVE OF ABSENCE					
Leave No.	From Date	To Date			

Explanation of codes: CHESSN - Commonwealth Higher Education Student Support Number ADM - Admitted LOA - Leave of absence
 ENR - Enrolled PLN - Planned UX - Under examination PASS - Passed CONV - Converted AWOL - Absent Without Leave
 EP - Enrolment Period RTS - Research Training Scholarship OT - Overtime Total EFTSL: Student's Total Gross EFTSL (as at the date of the profile) including any 'Prior EFTSL This Uni' or 'Prior EFTSL Other Uni'. FEC "Funded EFTSL Consumed" date: This date marks the end of the normal course duration expected for the degree. Students who have been permitted to enrol beyond the FEC date are regarded as overtime and as such may be charged tuition fees.

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Research Student Profile

Curtin University

Student ID: 18544224 **Name:** Mas Pungky Hendra Wijaya **Profile Printed:** 06 November 2018

THESIS COMMITTEE

Chairperson

PROF Dale Pinto 1345 Curtin Law School

Supervisor

DR Prafula Pearce Contribution 80.00 % 1345 Curtin Law School

Associate Supervisor

PROF Gabriel Moens Contribution 20.00 % 1345 Curtin Law School

KEY DATES

	Expected Date	Satisfied Date
Start (thesis)	29/02/2016	10/02/2016
Milestone 1 - Candidacy Due	29/08/2016	
Milestone 1 - Candidacy Approved	05/10/2016	
Faculty Recommend Human Ethics	05/10/2016	
Milestone 3 - Pre Submission	29/11/2019	
Funded EFTSU consumed (FEC)	29/02/2020	

Explanation of codes: CHESSN - Commonwealth Higher Education Student Support Number ADM - Admitted LOA - Leave of absence
 ENR - Enrolled PLN - Planned UX - Under examination PASS - Passed CONV - Converted AWOL - Absent Without Leave
 EP - Enrolment Period RTS - Research Training Scholarship OT - Overtime Total EFTSL: Student's Total Gross EFTSL (as at the date
 of the profile) including any 'Prior EFTSL This Uni' or 'Prior EFTSL Other Uni'. FEC "Funded EFTSL Consumed" date: This date marks the end
 of the normal course duration expected for the degree. Students who have been permitted to enrol beyond the FEC date are regarded as overtime
 and as such may be charged tuition fees.

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Appendix D Ethics Approval



Office of Research and Development

GPO Box U1987
Perth Western Australia 6845

Telephone +61 8 9266 7863
Facsimile +61 8 9266 3793
Web research.curtin.edu.au

29-Nov-2016

Name: Gabriel Moens
Department/School: Department of Law
Email: Gabriel.Moens@curtin.edu.au

Dear Gabriel Moens

RE: Ethics approval
Approval number: HRE2016-0474

Thank you for submitting your application to the Human Research Ethics Office for the project **Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganization**.

Your application was reviewed through the Curtin University low risk ethics review process.

The review outcome is: **Approved**.

Your proposal meets the requirements described in National Health and Medical Research Council's (NHMRC) *National Statement on Ethical Conduct in Human Research (2007)*.

Approval is granted for a period of one year from **29-Nov-2016 to 28-Nov-2017**. Continuation of approval will be granted on an annual basis following submission of an annual report.

Personnel authorised to work on this project:

Name	Role
Moens, Gabriel	CI
Pearce, Prafula	Supervisor
Wijaya, Mas Pungky Hendra	Student

Standard conditions of approval

1. Research must be conducted according to the approved proposal
2. Report in a timely manner anything that might warrant review of ethical approval of the project including:
 - proposed changes to the approved proposal or conduct of the study
 - unanticipated problems that might affect continued ethical acceptability of the project
 - major deviations from the approved proposal and/or regulatory guidelines

- serious adverse events
3. Amendments to the proposal must be approved by the Human Research Ethics Office before they are implemented (except where an amendment is undertaken to eliminate an immediate risk to participants)
 4. An annual progress report must be submitted to the Human Research Ethics Office on or before the anniversary of approval and a completion report submitted on completion of the project
 5. Personnel working on this project must be adequately qualified by education, training and experience for their role, or supervised
 6. Personnel must disclose any actual or potential conflicts of interest, including any financial or other interest or affiliation, that bears on this project
 7. Changes to personnel working on this project must be reported to the Human Research Ethics Office
 8. Data and primary materials must be retained and stored in accordance with the [Western Australian University Sector Disposal Authority \(WAUSDA\)](#) and the [Curtin University Research Data and Primary Materials policy](#)
 9. Where practicable, results of the research should be made available to the research participants in a timely and clear manner
 10. Unless prohibited by contractual obligations, results of the research should be disseminated in a manner that will allow public scrutiny; the Human Research Ethics Office must be informed of any constraints on publication
 11. Ethics approval is dependent upon ongoing compliance of the research with the [Australian Code for the Responsible Conduct of Research](#), the [National Statement on Ethical Conduct in Human Research](#), applicable legal requirements, and with Curtin University policies, procedures and governance requirements
 12. The Human Research Ethics Office may conduct audits on a portion of approved projects.

Special Conditions of Approval

This letter constitutes ethical approval only. This project may not proceed until you have met all of the Curtin University research governance requirements.

Should you have any queries regarding consideration of your project, please contact the Ethics Support Officer for your faculty or the Ethics Office at hrec@curtin.edu.au or on 9266 2784.

Yours sincerely



Dr Catherine Gangell
Manager, Research Integrity

Appendix F Ethics Approval Renewal



Office of Research and Development

GPO Box U1987
Perth Western Australia 6845

Telephone +61 8 9296 7883
Facsimile +61 8 9296 3793
Web research.curtin.edu.au

06-Dec-2017

Name: Gabriel Moens
Department/School: Department of Law
Email: Gabriel.Moens@curtin.edu.au

Dear Gabriel Moens

RE: Annual report acknowledgment
Approval number: HRE2016-0474

Thank you for submitting an annual report to the Human Research Ethics Office for the project **Reforming Indonesian Bureaucracy: Political and Legal Challenges in Institutional Reorganization**.

The Human Research Ethics Office acknowledges the project is ongoing and approval will remain current until 27-Nov-2018.

Any special conditions noted in the original approval letter still apply.

Standard conditions of approval

1. Research must be conducted according to the approved proposal
2. Report in a timely manner anything that might warrant review of ethical approval of the project including:
 - * proposed changes to the approved proposal or conduct of the study
 - * unanticipated problems that might affect continued ethical acceptability of the project
 - * major deviations from the HREC approved protocol procedures and/or regulatory guidelines
 - * serious adverse events
3. Amendments to the proposal must be approved by the Human Research Ethics Office before they are implemented (except where an amendment is undertaken to eliminate an immediate risk to participants)
4. An annual progress report must be submitted to the Human Research Ethics Office on or before the anniversary of approval and a completion report submitted on completion of the project
5. Personnel working on this project must be adequately qualified by education, training and experience for their role, or supervised
6. Personnel must disclose any actual or potential conflicts of interest, including any financial or other interest or affiliation, that bears on this project
7. Changes to personnel working on this project must be reported to the Human Research Ethics Office
8. Data and primary materials must be retained and stored in accordance with the [Western Australian University Sector Disposal Authority \(WAUSDA\)](#) and the [Curtin University Research Data and Primary Materials policy](#)
9. Where practicable, results of the research should be made available to the research participants in a timely and clear manner
10. Unless prohibited by contractual obligations, results of the research should be disseminated in a manner that will allow public scrutiny; the Human Research Ethics Office must be informed of any constraints on publication
11. Ethics approval is dependent upon ongoing compliance of the research with the [Australian Code for the Responsible Conduct of Research](#), the [National Statement on Ethical Conduct in Human Research](#), applicable legal requirements, and with Curtin University policies, procedures

and governance requirements
12. The Human Research Ethics Office may conduct audits on a portion of approved projects.

Should you have any queries regarding consideration of your project, please contact the Ethics Support Officer for your faculty or the Ethics Office at hres@curtin.edu.au or on 9266 2764.

Yours sincerely



Amy Bowater
Acting Manager, Research Integrity