Legal Politics of the National Legislation Program in the Establishment of the Law

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Abstract
Establishment of laws both from the House of Representatives and the Government rests on the National Legislation Program. Law of the Republic of Indonesia Number 12 Year 2011 states that the planning of the Law-making program is planned, integrated and systematically regulated in the National Legislation Program. As a planning instrument, the National Legislation Program should be able to play a strategic role in the legislative process, namely as a basis for implementation and benchmarking in evaluation and supervision. Even the National Legislation Program can also act as an illustration of the direction of Indonesian legal politics, which complements the National Medium-Term Development Plan as a guide to the direction of development policy in Indonesia.
Keywords: Legal Politics, National Legislation Program, Establisment of Law.

I. Introduction

National Legislation Program (Prolegnas) Preparation carried out in a planned, integrated and systematic manner. Planned, ie starting with substantial planning based on the provisions of Article 18 of the Law on Establishment of Legislation. The basis for drafting a list of priority bills (RUU) in the National Legislation Program, as follows: a. order of the 1945 Constitution of the Republic of Indonesia; b. Command of the Decree of the People's Consultative Assembly; c. other Law orders; d. national development planning system; e. national long-term development plan; f. medium-term development plan; g. government work plan and DPR strategic plan; and h. aspirations and legal needs of the community.

The preparation of the National Legislation Program was carried out in an integrated manner, meaning that there was a coordinative relationship between state institutions, namely the President, the House of Representatives (DPR), and the Regional Representative Council (DPD). The preparation of the National Legislation Program between the Government, the House of Representatives and the Regional Representative Council is coordinated by the House of Representatives through the House of Representatives that deals specifically with the field of legislation, in this case the Legislation Body (Baleg). In the Government level, the preparation of the prolegnas is coordinated by the minister who organizes government affairs in the field of law, in this case the Minister of Law and Human Rights (Menkumham). In the DPR, the preparation of the National Legislation Program is coordinated by the Legislative Assembly, while in the DPD, it is coordinated by the DPD fittings that handle legislation.

The preparation of the National Legislation Program was carried out systematically, which was arranged in certain ways, methods, and conditions, both within the DPR, DPD, and the Government, as well as being periodicized in determining the priorities of the National Legislation Program. This is closely correlated with the determination of the political direction of the development of legal substance in that period. The Medium-Term National Legislation Program, for example, is made at the beginning of the period of membership of the DPR as a National Legislation Program for a period of five years. While the Annual Priority Prolegnas, the preparation and determination are carried out every year before the stipulation of the Draft Law on the State Revenue and Expenditure Budget (RUU APBN) In drafting the Prolegnas, the DPR has a mechanism regulated in the DPR Rules of Procedure (Tatib DPR). In the DPR Rules of Procedure it was determined that Baleg was the coordinator of the preparation of the Prolegnas within the DPR and was the coordinator of the preparation of the Prolegnas between the DPR, the Government and the DPD. In drafting the Prolegnas, the DPR considers proposals from factions, commissions, and/or communities. After the results of the coordination of the preparation of the National Legislation Program between the Legislative Assembly of the House of Representatives, the Regional Representative Council, and the minister who organized government affairs in the legal field, it was agreed to be Prolegnas, the Legislative Assembly of the DPR subsequently reported to the DPR Plenary Meeting to be determined.

In essence, the Prolegnas conception has many functions, among which can provide an objective picture of the general conditions of the formation of the law; provide the composition of the priority scale of the drafting of the bill as a sustainable and integrated program so that it can be a guideline for the institutions authorized to form the law; as a means to realize inter-agency synergy in the formation of laws; and as early detection to prevent overlapping laws and regulations.

The preparation of the National Legislation Program so far still contains weaknesses and raises problems, both in terms of quality and quantity. In terms of quality, issues are related to several weaknesses, including: 1) there is still disharmony between the draft legislation (vertical and horizontal), starting from the source of the Pancasila law to the lowest level in the hierarchy of laws and regulations, 2) there is a tendency for the new harmonization process to be carried out at the time of drafting legislation, ideally starting from planning, 3) not integral to regulation with the National Long Term Development Plan (RPJPN), National Medium Term Development Plan (RPJMN), and Government Work Plans (RKP).

As stated by Bayu Dwi Anggono[1], That there is still a draft law that is not feasible to become a law, because it regulates material content from the Government Regulation (PP). Examples of inappropriate laws include Law No. 12 Year 2012 on Higher Education, which should be regulated in Government Regulation according to the mandate of Law No. 20 Year 2003 on the National Education System; Law No. 16 Year 2012 on the Defense Industry, which should be regulated in Government Regulation according to the mandate of Law No. 5 Year 1984 on Industry; and Law No. 15 Year 2011 on Poor Handling, which should be regulated by Government Regulation according to the mandate of Law No. 11 Year 2009 on Social Welfare.

The same thing was stated by senior researcher of the Indonesian Parliamentary Concern Community Forum (Formappi), Lucius Karus[2], that quality, the draft bill on the work of the DPR is also problematic, especially the Draft Law (RUU) in the political field which is directly related to the provisions of the legislators. Lucius saw that the Bill in the political field had always been the object of revision every time it would be ahead of political events such as elections.

The process of synchronization and harmonization is very important in creating a quality Prolegnas. In practice so far, the process of synchronization and harmonization at the beginning of the establishment of the National Legislation Program was carried out in a short time, so that it was only able to be carried out based on the title of the bill and a brief explanation regarding the contents of the bill. The draft Bill and Academic Text, which has begun to be a requirement for the submission of a bill after Law No. 12 Year 2011, does not help much because it is not uncommon for academic draft and draft of a bill to contain complex material and need a special deepening process to achieve a complete understanding.

For example, in the 2010-2014 National Legislation Program there were three bills that were in a different title, but the substance was tangent, namely the Draft Law on Health Workers, the Nursing Bill, and the Draft Midwife Practice Bill (whose title changed to the Midwifery Bill). The three bills regulate the profession in the medical or health fields. DPR, the Government and DPD should be able to synchronize and harmonize the three bills. The unification of the three bills is a good step, so that one bill can comprehensively regulate a particular issue.

In addition, the poor quality of the draft legislation is also influenced by the ego-sectoral factors of the institution, the quality of the research factor, the Academic Text (NA) factor, and others. Regarding NA, specifically this has long been a concern. NA often impresses soberly and the contents do not answer the substance that will be regulated in the draft law. In practice, often the proposed bill in the National Legislation Program is not accompanied by NA, even though NA is often prepared after the draft bill is made. Whereas NA has a very important and strategic function in the formation of laws. NA must also be accountable scientifically and should be the basis for every law formation, including as a basis if the law is examined in the Constitutional Court (MK).

Terms of procedure for drafting the law as regulated in Law Number 12 Year 2011 concerning Establishment of Legislation. It should be when the bill becomes a priority in the national legislation program, already equipped with Academic Text terms. But it turns out that in drafting the bill of the DPR, DPD, and the President often does not fulfill this requirement.

For example, the Bill on Persons with Disabilities proposed by the House of Representatives has not yet finished its academic text until August 2015. Meanwhile, of the 11 bills proposed by the government, only four have been completed until the end of August 2015. The Regional Representative Council which only proposed a bill, namely the Bill on the Archipelago Insight, just finished its academic text and submitted it to the Parliament and the President in August 2015[3].

Another reason for the poor performance of legislation is the late and inconsistent schedule for discussion of annual priority national legislation programs. According to Ronald, the feuding of the Red and White Coalition (KMP) and the Great Indonesian Coalition (KIH) post-2014 elections, caused the delays in the preparation of the 2015-2019 National Program and 2015 priorities. The preparation of the new National

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[1] Bayu Dwi Anggono, 2014, *Materi muatan yang Tepat Dalam pembentukan Undang-Undang, Serta akibat Hukumnya: Analisis Undang-Undang Republik Indonesia yang dibentuk Era Reformasi (1999-2012)*, Dissertation of the Faculty of Law, University of Indonesia.
[2] www.rmol.co/read/2016/04/02/241740/ the quality and quantity of legislation is still problematic, accessed on June 18 2018
[3] Ronald Rofiandri (director of monitoring, Evaluation and Strengthening of the Network of Law and Policy Studies Centers/PSHK). https://www.jakartabeat.net/feature/konten/tidak-patuh-prosedur,-kinerja-parlemen-dan-pemerintah-dalam-membuat-undang-undang-dinilai-buruk?lang=id, accessed on 8 June 2018

Legislation Program was completed in February 2015. Whereas based on the previous DPR experience, the Five-Year Prolegnas was usually scheduled to be scheduled no later than the second week of December in the same year as the inauguration of parliamentarians. Even for the determination of the 2016 Priority Prolegnas, the DPR and the President do not do so in accordance with the provisions of Article 20 paragraph (5) of Law Number 12 Year 2011. The provision states that the preparation and determination of the annual priority Prolegnas (as the implementation of the medium-term National Legislation Program) is carried out every year before the stipulation of the Draft Law on the State Budget. In other words, the House of Representatives and the President should target the establishment of the 2016 Prolegnas Priority prior to the stipulation of the 2016 Budget Bill. However, until the 2016 State Budget Bill is passed on Friday, 30 October 2015, the DPR and the President have not set a 2016 Priority Prolegnas at all.

Quantity problems, the ratio of the ability to discuss the bill in the DPR is not balanced. The achievements of the 2010-2014 Medium-Term Prolegnas for example, from 261 bills in the 2009-2014 Prolegnas, only 71 bills, or 27.2%, and the 2015-2019 mid-term prolegnas, from the 160 bills in the prolegnas 2015-2019, which has succeeded in becoming a law from 2015-2017 is 43 laws. The data shows that "The productivity of the legislation produced by the DPR is always far from the initial target and always has the potential to be tested in the Constitutional Court because of its low quality".

The fact that the national legislation program that has been prepared has not been able to provide a dominant color for the legislative process. From the aspect of quantity, the target of the Draft Law stated in the national legislation program is always not achieved. Even the achievement was not purely from the draft law which had been planned from the beginning. From the beginning of its use, in 2005 the national legislation program always ran in the same pattern, which was initiated with an ambitious target and ended with a bad achievement.[1] Based on the above, the problem examined in this paper is how to implement the 2015-2019 national legislation program?

II. Reseacrh Method

This type of research is normative and empirical legal research, this type of research is often called socio-legal research, which is a study focused on the regulation of law and the application of law in the context of its reality in society. In other words, this study examines the law both in the aspect of law in action. The main objective of the socio legal research type is to test whether a normative rule (postulate) can or cannot be used to solve a legal problem in reality (in concreto).[2]

This research is also a type of legal research that analyzes and examines the workings of law in society. The work of law in society can be assessed from the level of effectiveness of the law, compliance with the law, the role of institutions or legal institutions in law enforcement, the implementation of the rule of law, the influence of the rule of law on certain social problems or vice versa, the influence of social problems on the rule of law. Through this research, it is expected to know about the problems in planning national legislation programs in the formation of laws. By knowing these problems, efforts must be made to streamline the planning of national legislation programs. Research will also be carried out on various provisions of legislation based on the stages of the formation of legislation, the mechanism for drafting and establishing national legislation programs, the mechanism for drafting and discussing the Draft Law, and the ideal concept of planning a national legislative program.

III. Result and Discussion
A. National Legislation Program Policy Direction 2015 - 2019
The national legislation program contains a list and priority scale of the mid-term and annual legislative programs that are arranged in a planned, integrated and systematic manner by the Indonesian House of Representatives together with the Government in accordance with the development of the legal needs of the community in achieving the country's objectives at certain stages and periods.

Operationally the national legislation program contains a list of draft laws based on certain methods and parameters and is inspired by the vision and mission of national law development. The vision embodied in the preparation of the 2015-2019 national legislation program, is "the realization of legal development that is fair through the quality of law and human rights enforcement to improve the competitiveness of the nation's economy".

To achieve the vision as mentioned above, the national legislation program is structured with a mission; creating quality and fair law enforcement, increasing legal contributions to increase the nation's economic competitiveness, and increasing legal awareness in all fields.

Thus, it becomes clear that the purpose of the drafting of the national legislation program is to be able to

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[1] Fajri Nursyamsi, 2015, *Menggagas Prolegnas Berkualitas*, (online), https://www.selaras.com, accessed on July 17, 2016.
[2] Bambang Sunggono, 1997, Metode Penelitian Hukum, PT Raja Garafindo Persada, Jakarta, p. 91

plan and provide systematic direction regarding the development of national law to be carried out in 2015-2019, as well as to formulate the priority of the draft law that will be established during that period as an operational basis. in achieving national development goals. The purpose of the preparation of the aforementioned prolegnas is that the objective to be achieved in the preparation of the national legislation program is the availability of systematic planning and direction in implementing the national law development program, and the compilation of a list of legislation in accordance with the direction of national development policies, as well as the realization of legislation. invitations that are aspirational and meet community needs.

The issue of weakness in the preparation of the National Legislation Program was revealed at the Working Meeting of the Legislative Assembly with the Minister of Law and Human Rights in the context of the drafting of the Priority Bill 2014, 10 December 2013. Minister of Law and Human Rights Yasonna Laoly said at the time that the preparation of the National Legislation Program was from the RPJMN I period. 2005-2009 and RPJMN II 2010-2014 are still seeing a lot of things that need to be evaluated both in terms of quality, quantity and procedural. Weaknesses in the preparation of the National Legislation Program, among others, occur because of the existence of sectoral egos with the implication of the thought that each issue must be resolved by forming a law. As a result, there is an overlapping phenomenon or it is over regulated in a particular field.[1]

The Minister also stated that the existence of the National Legislation Program so far still seems to be merely a "list" of the bill that wants to be discussed (wishlist) rather than a program that is directed to support the achievement of development goals that have been set forth in the national development planning document. The statement should be a joint concern of stakeholders, in this case the DPR, DPD, and the Government. Determining the direction and policy in the National Legislation Program for the next five years needs to pay attention to the direction and general policy of national development and RPJMN III 2015-2019 as stipulated in Law Number 17 of 2007 concerning RPJP. Basically, as a basis for achieving national development goals, regulation is an absolute matter. Therefore, the National Legislation Program should be in accordance with Indonesia's national development plan. The Indonesian national development plan has been outlined in RPJPN 2005-2025. He who sets the stages and scale of long-term development priorities that will become the agenda in the RPJMN. The stages and priority scale set out in RPJPN reflect the urgency of crucial issues to be resolved and certainly without negating other problems. Therefore, development priorities in each stage vary. However, everything must be carried out continuously from one period to the next.

Indonesia will enter the RPJMN III phase with a goal aimed at strengthening overall development in various fields by emphasizing competitive economic competitiveness based on natural resource excellence (SDA), human Resources (SDM) quality, and enhancing the ability of science and technology. So far, the development of national law is carried out in accordance with the mandate of the RPJMN I and RPJMN II which focuses on increasing legal awareness and law enforcement. The direction of the legal development policy in the 2010-2014 RPJMN is directed at realizing law enforcement; maintain public order; and increasing respect, protection and fulfillment of human rights. These various policy directions are then concretized into a number of strategies: (a) increasing the effectiveness and quality of legislation; (b) improving the quality and integrity of legal HR; (c) improving relations and strengthening coordination between legal institutions; and (d) increasing legal awareness in all government agencies both at the central and regional levels. In the RPJMN III stage, the development of national law is aimed at further developing awareness and law enforcement in various aspects of life, as well as increasing the professionalism of state officials at the central and regional levels so that they are more able to support national development. The above national development targets illustrate that development in the legal field is emphasized in two aspects, namely legal awareness as a preventive aspect and law enforcement as a repressive aspect.[2]

Based on the stages of the national long-term and medium-term development targets in RPJMN III that have been described, it can be concluded that several important points in the national medium-term legal development plan for the 2015-2019 period are (a) creating quality and fair law enforcement; (b) increasing legal contributions to improve the nation's economic competitiveness; and (c) increasing legal awareness in all fields. Thus, the preparation of policy directions and development strategies in the field of law in the next five years is very important to pay attention to aspects of economic competitiveness. The link between economic competitiveness and the law itself has several obstacles, including the lack of references linking the correlation between economic competitiveness and law, and the broad and complex aspects of legal development that will be reduced if only related to economic aspects, which is usually the domain of civil law. Therefore, elaboration is needed regarding legal relations with economic competitiveness.

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[1] Brief Report of the Legislative Working Meeting with the Minister of Law and Human Rights in the context of the preparation of the 2014 Priority Bill National Legislation Program on 10 December 2013.
[2] Directorate of Law and Human Rights/Bappenas, 2015-2019 RPJMN Background Study in the Field of National Law Development, Ministry of National Development Planning/National Development Planning Agency (Bappenas), Jakarta, 2013.

B. Determination of the Draft Law in the National Legislation Program

The many targets of the Priority Prolegnas Bill in previous years that were not completed or unable to be resolved, therefore it was necessary to tighten the entry of a bill by the proposer, for example the necessity of an Academic Text and draft bill to become an absolute requirement for a bill to enter the long-term National Legislation Program. This does not only apply to commissions in the House of Representatives, but the government must also be disciplined in making academic texts and drafting the bill before proposing to enter the National Legislation Program, in an effort to improve the preparation of the Prolegnas list, the Minister of Law and Human Rights and the DPR Legislation Body must sit together so that the preparation of the Prolegnas must be adjusted to the capabilities and conditions. Yasonna H Laoly[1] states that the requirement for the existence of an academic text and draft bill is not only in the form of an agreement, but must also be stated in written rules. So, when the House of Representatives and/or the government when proposing a bill must be ready with these two conditions.

From the target of the 2015-2019 medium-term national legislation program of 160 bills, the Indonesian House of Representatives has completed 43 bills, up to 2017. Referring to this amount, it means there are 123 bills that need to be completed from 2018 to 2019. Reflecting on the ability of legislation in the previous period, it is likely that the prolegnas target for the 2014-2019 period was not achieved. This shows that the medium-term prolegnas are less mature, integrated and systematic.

Determination of poorly planned mid-term prolegnas has an impact on the annual prolegnas. In 2015 the DPR established 37 bills in the national legislation program, but of the 37 bills, until April 2015, there was only one legislative product produced. That is, the Law on the Election of Regional Heads, and until the end of December 2015 the DPR only produced 3 Laws from the 37 bills targeted. This achievement is considered as the DPR's worst performance marker since the reform era. A number of pretexts submitted by the legislator for the performance are that the government is busy and the trial period is too short, other issues affecting the performance of the DPR as conveyed by the Deputy Chairperson of the House Legislation Board Saan Mustopa in June 2015 are political objective conditions as a continuation of the 2014-2019 Presidential Election must be admitted that it is enough to influence the performance of the DPR at that time. Tensions between the Red and White Coalition and the Great Indonesia Coalition still heated up in early 2015.

In 2016, the DPR set 40 bills in the annual priority national legislation program. As a result, the House of Representatives passed 10 annual priority prolegnas bills. In addition, there are 11 bills which are open cumulative and one bill that was completed in 2015, but the enactment was carried out in 2016. Thus, the total bill passed in 2016 totaled 22 bills. The same thing also happened in the 2017 priority law bill, the bill included in the prolegnas was 49 bills and 18 were passed into law. And the bill that is included in the 2018 priority program is still high, namely 50 bills, the DPR and the Government should be realistic when compiling and determining the list of Prolegnas bills. Because, in view of the priority law on the previous years which had not always achieved the target, the 508 priority bill for 2018 could not be completed this year. In addition to political year conditions that require board members to return to their constituencies, resulting in legislative work being not optimal.

The House of Representatives, as an institution that has the function of legislation, does not seem to reflect on previous experiences in producing laws. The target is not realistic if it does not consider the records submitted by various parties regarding the performance of the DPR in carrying out the legislative function. Lack of careful planning which is marked by unpreparedness of academic texts in each bill discussed is one factor that always arises as a cause of the low performance of the DPR's legislation. In addition, the legislative function of the House of Representatives has been less selective in determining the bill which is the priority of settlement.

Legislators should see how important it is to set performance targets for legislation that are more realistic to achieve. Determination of realistic targets and their fulfillment is not merely a fulfillment of tasks and authority, but also becomes an important political education for the community.

IV. Conclusion

Based on the explanation above, it can be concluded that the main problem of the legislative function of the DPR in each period of DPR membership from 2009-2019 is the low performance of the DPR in the productivity of legislation. National legislation programs should be truly synergized with the national long-term development plan; Medium-term development plan; Government work plan and DPR strategic plan. In addition, it is also necessary to tighten the entry of a bill by the proposer, for example the necessity of an Academic Text and draft bill to become an absolute requirement for a bill to enter the long-term National Legislation Program. This does not only apply to the commissions in the DPR, but the government must also be disciplined in making academic texts and drafting the bill before proposing to enter the Prolegnas. in an effort to improve the preparation of the

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[1]http://www.hukumonline.com/berita/baca/lt5acddb0819548/dpr-akui-penyelesaian-ruu-prolegnas-tidak-optimal, (online) accessed on June 8 2018

Prolegnas list, the Minister of Law and Human Rights and the DPR Legislation Body must sit together so that the preparation of the Prolegnas must be adjusted to the capabilities and conditions.

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