



PROBLEMS FOR THE DEVELOPMENT OF LEGISLATION REGULATIONS IN INDONESIA

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ABSTRACT

This article is a discussion of problems related to the preparation of existing laws and regulations in Indonesia, where many of the formations seem rushed, the procedures/formalities are only carried out as a formality. The methodology used is a normative study, which focuses on the legal approach. Other data sources used are articles and journals. The results of the study that can be concluded that the preparation of Legislation is regulated in Law Number 12 of 2011 concerning the Formation of Legislation, where there is regulated how the procedure/systematic of its formation, the principles are contained in Article 5, also the content material is in Article 10. There is a need for greater involvement by the community, because the principle of openness, which is still lacking, moreover the impact of the law made on the community, must also provide benefits to the community. The number of laws and regulations that are formed if the visit is canceled is considered a legal product made by the government is not good, for that utilizing virtual media can increase public trust and participation in the formation of existing laws and regulations in Indonesia.

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1. INTRODUCTION

Humans and law are two things that cannot be separated. Given that humans have reason to act by themselves, there needs to be a rule that regulates human behavior so that the world can run well. Ubi Societas Ibi Ius, which means that where there is society, there must also be law. It can also be interpreted that law is a foundation or basis in social life in the community to build order in society. Law in society serves to regulate the regularity of human behavior to avoid social problems. Indonesia itself is a state of law. The legal rules in Indonesia are stated in the form of laws and regulations. Of course, the existence of law in the form of legislation can bring changes to society for the better. However, keep in mind that in making or compiling these laws and regulations requires concepts and techniques in a plan. This means that in the preparation of laws and regulations there must be a mature plan that includes the techniques and concepts of making these laws and regulations.

Without a careful plan, being able to make these laws and regulations can be considered as defective legislation, both formal and material defects and has an impact on cancellation, which of course we must avoid by the legislators, which in this case are: Legislative. legislation is a regulation that has a basis or foundation which is called Grundnorm.¹ Grundnorm itself is the foundation or a core of every legal and state order. And Grundnorms for Indonesia is Pancasila. Pancasila is the source of all legal sources in Indonesia. For this reason, in preparing plans for the formation of legislation, it must be in accordance with Pancasila.

If a statutory regulation is not based on Pancasila, then the statutory regulation cannot be promulgated because it does not have a strong basis in its preparation. As the author has mentioned, in a drafting plan there must be a concept. With a mature concept, it can make the laws and regulations that will be made clear. It is clear here that the meaning is clear where this legislation will be formed. By having a clear concept, these laws and regulations will become laws that have justice and strong legal certainty.

In Article 1 paragraph 3 of the 1945 Constitution, it has been clearly explained that the Indonesian state is a state of law, then of course everything must be based on the laws or regulations currently in force, we call it positive law. All acts that violate the law, everything is regulated in the law, without any exceptions. This regulation was established as regulated by Law Number 12 of 2011 concerning the Establishment of Legislation. So that legal products are made in accordance with applicable provisions, not on the basis of the wishes of the authorities or do not have a concept.

The statutory regulations must of course be good, in the sense that both through definite methods and methods, as regulated or stipulated by law, provisions are also needed in accordance with what is stipulated by law regarding the type and material of cargo if you look at the opinion of A. Hamid S. Attamimi then the formation of legal norms that apply outward and binding in general as outlined in the types of laws and regulations according to their hierarchy.²

Several cases that occur if we look closely, such as the Omnibus Law, many parties have stated that they do not agree with the Omnibus Law on Job Creation, criticism, and protests continue to flow in various regions starting from the submission of the draft Law, discussion until its ratification.³ The law was finally passed and running, but along the way, many filed a lawsuit to the Constitutional Court, for material review⁴ related to several articles that were considered fatal errors, Prof. Edy in Detiknews said an overlapping penalty in the Job Creation Act. ⁵Not only is the material tested but also the law, submitted to the Constitutional Court with its Formal Lawsuit, stating that the formation of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution and does not have conditionally binding legal force, as long as does not mean that no corrections have been made within two years of the pronouncement of this decision⁶. Recently, regarding the newly formed Constitutional Court Law, that Prof. Arif Hidayat said the law was formally flawed, so it had to be annulled.⁷ It can be explained that in its formation it is not in accordance with the process of forming the applicable laws and regulations.

Legislation is not an opinion or academic article made based on opinion or theory alone. Opinions and articles do not have the power to compel others to do or not do something. However, the law is a legal document that has consequences for sanctions for the regulated party.⁸

The concept of laws and regulations in Indonesia should be in accordance with what is stated in Law Number 12 of 2011 concerning the Establishment of Legislations, as well as the principles that have been established in their preparation, so that both formally and materially the laws and regulations that are formed can provide benefits, not overlapping and also not canceled quickly, because of course it costs a lot of money. For this reason, the author is interested in making this paper about the promlemtics of the preparation of laws and regulations.

2. RESEARCH METHOD

In writing this article the author uses a normative study with a statutory approach. According to Johnny Ibrahim, normative legal research must use a legal approach, because what will be studied are various legal rules that are the focus as well as the central theme of a research.⁹ Sources of data used are legislation, articles, and other scientific journals used to examine the prom- ebhematics of the formation of legislation

3. RESULTS AND ANALYSIS

1. Legislation

National law is all laws that apply in the territory of the Unitary State of the Republic of Indonesia in the form of law written or unwritten¹⁰. Legislation is one of the written national laws. Legislation or in English called *Legislation* is a written regulation formed by state institutions or authorized officials and generally binding.¹¹

Legislation has a role to change the country for the better. The existence of laws and regulations is also intended so that there is no arbitrary executive power over citizens. Therefore, with the existence of this legislation, the people and also the government can make a deal. In that case, everything is stated in the form of legislation.

Even the people in this case can know what actions are prohibited in the laws and regulations, and know the limits of the government's authority. But in addition to the laws and regulations made by the government, the majority of people in Indonesia still use the customary law tradition that comes from habit.¹²

There are two aspects contained in the legislation, the first is that legislation is the process of forming state regulations both in the central and regional areas. Then, the second, statutory regulations are all state regulations which are the result of the formation of regulations both at the center and in the regions.¹³

Legislation is divided into two characteristics. The first characteristic is that the legislation is only valid once after it is completed. While the second characteristic is that it applies continuously and has no expiration date. However, laws and regulations that have this nature will automatically no longer be used after changes to new laws and regulations or the revocation of legislation.

2. Principles of Drafting and Establishing Good Legislation



Article 5 paragraphs (1) of Law Number 12 of 2011 concerning the Establishment of Legislations states that in forming laws and regulations must be carried out based on the principle of the formation of laws and regulations that good, which includes:

- a. Clarity of purpose is that every formation of legislation must have a clear goal to be achieved.
- b. The right forming institution or official, that is, each type of Legislation must be made by a state institution or authorized Legislative Forming official. These laws and regulations can be canceled or null and void if they are made by state institutions or officials who are not authorized.
- c. The suitability between the types, hierarchies, and content material is that in the Formation of Legislation Regulations must really pay attention to the right content material in accordance with the type and hierarchy of the Legislation.
- d. What can be implemented is that every formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically.
- e. Efficiency and effectiveness means that every statutory regulation is made because it is really needed and useful in regulating the life of society, nation and state, and;
- f. The clarity of the formulation is that each Legislation must meet the technical requirements for the preparation of Legislations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation, and;
- g. Openness is in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining, and enacting transparent and open legislation. Thus, the entire community has the widest opportunity to provide input in the formation of laws and regulations.

3. Content Material

Each statutory regulation must have its own content material which is of course different from the content material in other laws and regulations. The content of the material is the content in accordance with the form of certain laws and regulations¹⁴. The content of the law according to Article 10 (1) of Law Number 12 of 2011 concerning the Establishment of Legislation, namely¹⁵:

- a. Further regulation regarding the provisions of the 1945 Constitution of the Republic of Indonesia;
- b. The order of a law to be regulated by law;
- c. Ratification of certain international agreements;
- d. Follow up on the decision of the Constitutional Court; and/or
- e. Fulfillment of legal needs in society.

In addition to the content material that has been stated in Law Number 12 of 2011 concerning the Establishment of statutory regulations, there are also specific content materials, such as the stipulation of government regulations in lieu of laws, determination of penalties for criminal sanctions and revocation of laws. This previously existed.

The content material must also contain the rights and obligations of citizens, recognition of state sovereignty, followed by the implementation of regional and regional divisions, human rights, citizenship and population as well as state and regional territories.

In ascertaining what content materials can be used and of course regulated by law, three guidelines can be used as references, including¹⁶:

- a. Judging from the provisions of the body in the 1945 Constitution;
- b. Seen based on state insight based on law;
- c. Seen based on the insight of the government which is also based on the constitutional system.

With these three guidelines, you will find some legal materials, which include regulating human rights, regulating who has the right to become citizens and how to get or lose citizenship, the division of state power, which is firmly regulated in the Constitution of the Republic of Indonesia 1945 and the MPR Decree.

4. The Concept of Drafting Legislation

The concept of legislation is a plan in the formation and preparation of laws and regulations. Concept is a very important thing. In the concept of drafting laws and regulations, there are several things that must be considered. What must be considered is that the concept of drafting laws and regulations must contain a sense of justice.¹⁷With people starting to understand the law, a sense of justice will automatically emerge from the people's conscience.

Not only that, in the concept of drafting and forming laws and regulations, several principles must be adhered to, including

- a. The rules that have a higher level will beat the rules that are lower. In this case, if a problem occurs, it must prioritize higher regulations first.

b. The new rules will beat the old ones. As with point (a), in this case, the new regulation can override the old regulation.

c. Rules that have a special nature will beat the rules of a general nature. As we know that all things that are special can take precedence over things that are general. As befits laws and regulations.

Of course, in the concept of drafting laws and regulations, there must be values contained in Pancasila as well as justice that the author has described above. In a state of law like Indonesia, the concept of drafting the right laws and regulations is a concept that always puts Human Rights (HAM) first. The law is formed for humans, therefore the concept in the preparation of law in the form of legislation must contain the protection of Human Rights (HAM).

The formation and preparation of laws and regulations must also be ensured that they meet good targets for the community. So that later there will be no conflict between the government as the maker of legislation and the community.

5. Framework for Drafting Legislations

In the formation and preparation of laws and regulations, it is necessary to have knowledge to know how to form and formulate good and correct laws and regulations. Where the preparation of the legal framework is included. Which in this case has certainly been mentioned in Law No. 12 of 2011 concerning the Establishment of Legislation. Which among others consists of:

a. **Title / Naming**, usually contains the type, number, year of legislation and the name of the legislation. As well as in terms of naming, must use only 1 word or phrase. The title is also written in all capital letters and must not use abbreviated words.

b. **The opening**, usually must include the phrase "By the grace of God Almighty", in capital letters. The consideration begins with the word "Considering". The main thought of the consideration must also contain philosophical, sociological and juridical elements. Each statutory regulation containing more than one main idea begins with the letter of the alphabet, and Diwali with the word "that" and ends with a semicolon. The Legal Basis is also included in the opening section and begins with the word "remember". There is also a Dictum. The dictum consists of the word "decide", the word "stipulate", and the type and name of the legislation.

c. **Body**, contains all the material content of the legislation. Usually the contents are grouped into several groups, including: General provisions, subject matter regulated, criminal provisions, transitional provisions and basic provisions. Criminal and transitional provisions are included only if necessary. The grouping materials are arranged in books, chapters, sections and paragraphs. The body also contains articles. The article can be broken down into several paragraphs.

d. **cover**. Contains the formulation of statutory orders and placement of statutory regulations, signing the ratification of the said statutory regulations, promulgation of said statutory regulations and the end of the closing section.

e. **Explanation**, explanation here is only if needed.

f. **Appendix**, Usually contains descriptions, tables, drawings, lists, sketches or maps.

According to the author, the concept of drafting and forming laws and regulations must be in accordance with the values contained in Pancasila to avoid conflicts that occur between the community and the government. In terms of the preparation and formation of laws and regulations, there must also be openness so that the public has the opportunity to provide constructive input for the sake of good and mutually agreed laws and regulations. Not only that, the preparation and formation of laws and regulations must be made in accordance with good drafting techniques and the drafting framework must be in accordance with what has been stipulated in Law Number 12 of 2011 concerning the Establishment of Legislations.

Quoting from Lon Fuller's opinion, law cannot be accepted as law, unless it departs from a certain morality, that the law must meet certain moral standards and it deserves to be called law if it shows failure because it makes *contradictory rules*, a system must not contain rules that conflict with each other.

Lon Fuller emphasized on what is needed to make the law work, that the legal system must represent morality in internal morality, the principle of legality or the legal basis of legislation. Consistent over time, and equality between official actions and declared rules.

Consistent at all times, the criteria being consistent at all times requires that it should not change too quickly so that it is difficult for the community to identify their legal status. This becomes a problem in that the law changes very slowly, for example related to the issue of the criteria for balancing confidence and *flexibility* of laws and regulations.

The public's disobedience to legal legal policies is not solely caused by their ignorance of the substance of the law, but also because their interests are not maximally accommodated in the legal policy.

Legal policy can be justified as long as there is still partiality in responding to the interests of the



community and the desired sense of justice is realized, in line with the line of thought initiated by Fuller, that the aspect of morality to be built by legal policy makers does not only concern "internal morality" (*Internal morality of law*) only. In addition, the "external morality" of the law (*external morality of law*) leads to issues of justice, solidarity, siding with the people/society and so on.¹⁸

The public can participate in the draft law formation, through virtual media, namely Handpone, where by making an application of suggestions and criticisms needed so that it can include input from the community and with a longer grace period but there is a time limit, it is hoped that the principle of openness is expected. can be accumulated according to the concept.

CONCLUSION

Of course, in the concept of drafting laws and regulations there must be values contained in Pancasila as well as justice which the author has described above. In a state of law like Indonesia, the concept of drafting the right laws and regulations is a concept that always puts Human Rights (HAM) first. The framework for drafting laws and regulations consists of: Title/Naming, Preamble, Body, Closing, Explanation (if needed), Attachment (if needed). Legislation should also comply with the principles that already exist in the Act, so that the resulting product can provide benefits for the community, the Legislation emphasizes on what is needed to make the law work, that the legal system must represent morality in internal morality the principle of legality. Openness to the public is very important, where we can take advantage of electronic media in a virtual concept.

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