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Legal analysis of the procedure for the formation of the law of the republic of Indonesia

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ABSTRACT

Laws are a type of legislation whose formation process takes a long time with lengthy procedures. This study aims to examine the mechanism for the formation of laws and regulations in Indonesia. This research uses a descriptive normative approach, namely by explaining or legislation, legal theories, the teachings of the science of law as well as the opinions of leading scholars. The result of this study show that the process of forming laws and regulations in Indonesia is still facing various obstacles so that to finalize a product of the legislative body's law together with the government requires a relatively long time. The draft bill queues according to the priority scale in the National Legislation Program. The normal procedure for forming laws in Indonesia starts from the stages of planning, drafting, discussing, ratifying or enacting until promulgation is a process that takes quite a long time to go through discussions and debates in the legislature to find common ground and agreement. It is not always possible to predict when the process will end at the enactment stage. Meanwhile, the community's need for legal certainty is a more important matter to be fulfilled immediately.



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Introduction

Creating order and justice allows workers to work in peace, teachers and students to study comfortably, children can play happily, and the President can manage the country wisely. Therefore, legislation has a significant meaning in realizing the goals of the state (Ridwan & Sudrajat, 2020). In the end, national stability will be created so that national development leads to the development of the Indonesian people as a whole (Indonesian people must be formed from a human standpoint, both individually and as a group) and Indonesian society as a whole (Mayrudin, 2018). In a state life, statutory regulations, such as the 1945 Constitution and regional regulations, are prepared by authorized institutions with different drafting processes, as reported by the Mastugino.blogspot.co.id page. The Republic of Indonesia is a state based on law, every government program, both the central government and local government, must make statutory regulations. Laws and regulations that have been amended in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation (hereinafter referred to as the PUU Formation Law) state that: "Formation of Legislation is the making Laws and Regulations which cover the stages of planning, drafting, discussing, validating or stipulating, and enactment"

What will be discussed in this study is the analysis of procedural law in the formation of laws, so before we examine it, we first know about laws, what are laws? Laws are statutory regulations formed by the House of Representatives with the approval of the President. Laws are statutory regulations, in the formation of which the President must obtain the approval of the DPR. These provisions are regulated in the 1945 Constitution Article 5 Paragraph 1 "The President has the right to submit Draft Laws to the DPR", Article 20 Paragraph 1 "The DPR has the power to form laws" and Article 20 Paragraph 2 "Every bill is discussed by the DPR and the President for mutual approval", reported from the page Komunitasgurupkn.blogspot.co.id.

What is the Flow of Forming a Law? According to Hukumonline.com, based on Article 20 paragraph (1) of the 1945 Constitution ("1945 Constitution"), the power to form laws (UU) rests with the People's Representative Council ("DPR"). Furthermore, Article 20 paragraph (2) of the 1945 Constitution stipulates that each draft law ("RUU") is discussed by the DPR and the President to obtain mutual approval. The process of forming a law is regulated in Law no. 12 of 2011 concerning the Establishment of Legislation (UU 12/2011). In addition, the process of forming laws is also regulated in Law no. 27 of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council ("UU 27/2009"). Based on Article 10 paragraph (1) of Law 12/2011, the contents that must be regulated by law are: 1) further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia; 2) an order for a law to be regulated by law; 3) ratification of certain international agreements; 4) follow-up on the decision of the Constitutional Court; and/or 5) fulfillment of legal needs in society.

In Law 12/2011, the law-making process is regulated in Article 16 to Article 23, Article 43 to Article 51, and Article 65 to Article 74. Meanwhile, in Law no. 27 of 2009, the formation of laws is regulated in Articles 142 to 163. For the full process, you can also see the DPR Standing Orders regarding the Procedures for Forming Laws. Based on the provisions of Law 12/2011, Law 27/2009 and the DPR Standing Orders, the researcher Summarize the process of forming a law as follows: 1) Bills can come from the DPR or the President. 2) Bills from the DPR are submitted by DPR members, commissions, joint commissions, or DPR fittings that specifically handle the field of legislation or the Regional Representative Council (DPD). 3) Bills submitted by the President are prepared by ministers or heads of non-ministerial government institutions in accordance with their scope of duties and responsibilities. 4) The bill is then compiled in the National Legislation Program (prolegnas) by the Legislative Body of the DPR for a period of 5 years and also made in an annual period which contains bills that have been prioritized for discussion. 5) Every proposed bill must be accompanied by an Academic Paper except for the Bill on the State Budget (APBN), the Bill on the stipulation of Government Regulations in lieu of Laws (Perpu) to become Laws, and the Bill on the revocation of Laws or the revocation of Perpu. 6) The leadership of the DPR notifies the existence of a bill and distributes the bill to all members of the DPR at a plenary session. 7) The DPR in the next plenary meeting decides the bill in the form of approval, approval with amendments, or rejection. 8) Furthermore, the bill is followed up with two levels of discussion. 9) Level I discussions are carried out in commission meetings, joint commission meetings, Legislation Body meetings, Budget Committee meetings, or special committee meetings. 10) Activities in the level I talks were carried out with an introductory deliberation, discussion of an inventory list of problems, and delivery of mini-fraction opinions. 11) Level II talks are carried out in a plenary session. The plenary session contains submission of reports containing processes, mini faction opinions, DPD mini opinions, and the results of the Level I Conversations; statement of approval or rejection of each faction and member verbally requested by the chairman of the plenary meeting; and final opinion of the President conveyed by the minister representing him. 12) If an agreement is not reached through deliberation for consensus, the majority vote takes the decision. 13) Bill that discusses regional autonomy; central and regional relations; formation, expansion, and merging of territories; management of natural resources or other resources; and balancing central and regional finances, carried out by involving the DPD but only in level I discussions. 14) In the preparation and discussion of the bill, including the deliberation of the bill on the State Budget, the public has the right to provide input orally and/or in writing to the DPR through the leadership of the DPR and/or other DPR instruments. 15) The bill that the DPR and the President have approved is submitted to the President to be signed, added with a sentence of ratification, and promulgated in the State Gazette of the Republic of Indonesia.

Research by Munawar et al. (2021) indicate that the process of designing and ratifying Law Number 11 of 2020 concerning Job Creation is not in accordance with Law No. 15/2019 concerning the Formation of Legislations because at the planning and drafting stages it turned out to be Academic Papers and the Basis for Drafting Legislation Programs. Research by Ahmad (2021) implied that conceptually only statutory regulations are the main pillar in the formation of law, jurisprudence which is the reference for common law is not mentioned as one of the priorities in efforts to form national law. The results of this study by Kholbi (2019) conclude that in the mechanism for forming laws based on Law no. 10 of 2004 and Law no. 12 of 2011 is more

planned, gradual, directed and integrated compared to Presidential Decree No. 188 of 1998 concerning Procedures for Preparing Draft Laws that are not planned, gradual, directed and integrated. There is relevance regarding the formation of laws in Indonesia with *siyasa dusturiyah fiqh* regarding the formation of *qonun/law*. This relevance is realized that in Islam there is also a legislative body in the formation of *qonun/law*, namely *ahlu halli walaqdi*. In the mechanism also through deliberations, *ahlu halli walaqdi* has the right to form and stipulate *qonuns/laws*, the caliph also has the right to propose *qonuns/laws* to be adopted by *ahlu halli walaqdi* in deliberations. This study aims to examine the mechanism for the formation of laws and regulations in Indonesia.

Method

This research uses a legal normative approach, namely by explaining or legislation, legal theories, the teachings of the science of law as well as the opinions of leading scholars. Legal research carried out by examining literature or secondary data as a basis for research by conducting a search of regulations and literature related to the problem under study (Soekanto, 2018). This is in line with what was stated by Soetandyo Wignjoesoebroto that doctrinal legal research is legal research that is carried out (activities) not only in the form of tracing the limits of norms (positive law/statutory regulations).

Results and Discussion

The process or procedure for forming laws is a stage of activity that is carried out on an ongoing basis. This process begins with the formation of an idea or notion about the need to regulate an issue which is then followed by activities to prepare draft laws, either by the People's Representative Council (DPR), Regional Representative Council (DPD), or by the government. Then the discussion of the draft law in the House of Representatives to obtain joint approval is followed by ratification ending with promulgation.

Legal Basis for Forming Legislation

Types of Legal Basis for Formation of Legislation in Indonesia This power did not last long. In the 16th century, colonists started coming to this country to covet its wealth (Maryam, 2017). Alternating colonial nations who carried out their cruel acts against Indonesia for nearly three hundred and fifty years (Rosidi, 2018). In that long span of time, the unity and unity that was fostered in Indonesia became broken again. People in each region only think about how to defend their own area (Arka, 2017). Basically, a statutory regulation cannot simply be formed and ratified until it is enacted (Cakra & Sulistyawan, 2020). There are several public policy stages what must be done so that statutory regulations can be made (Ramdhani & Ramdhani, 2017). One of these stages is ensuring that there is a strong legal basis in the formation of these laws and regulations. The legal basis for the formation of legislation in Indonesia itself is divided into several types as explained below.

Philosophical Foundation

The type of legal basis for the formation of laws and regulations in Indonesia that we want to discuss first is the philosophical basis. The foundation of philosophy is commonly known by the international community as *filosofische grondslag*. The purpose of this foundation is that when a statutory regulation is to be formed, it must be in accordance with the ideals and views of the people's life. Legislation is also said to have a philosophical foundation when it is in accordance with the ideals and philosophy of the nation's life. If we speak from the point of view of the Indonesian people, then a law or regulation must be in accordance with the philosophy of life of this nation, namely basic values of Pancasila. If the statutory regulations do not meet these requirements, they cannot continue to be formed or enforced. So that basis, it is very important that when a draft legislation has to be scrutinized properly.

Sociological Basis

The second type of legal basis for the formation of laws and regulations in Indonesia is the sociological basis. in international terms, the sociological basis is usually referred to as *sociologische grondslag*. The purpose of the sociological basis for the formation of the purpose of statutory regulations is that the provisions contained in them must be in accordance with statutory regulations, legal awareness in society, general beliefs, values and norms, as well as laws that exist in society so that statutory regulations what is to be made can be implemented.

Juridical Basis

The last type of legal basis for the formation of laws and regulations we discussed is the juridical basis. The juridical basis is commonly known by the international community as *rechtsgrond*. The purpose of this basis is that a statutory regulation must have a juridical basis (legal basis), legality, and a legal basis contained in statutory regulations of a higher or equal degree according to the hierarchy of statutory regulations. On the other hand, the juridical basis can also be used to question whether the laws and regulations to be made have been

implemented according to the authority of the state institution that wishes to issue them. Next, we will discuss several laws and regulations which form the legal basis for the formation of laws and regulations in Indonesia.

Legal Basis for Formation of Legislation in Indonesia

In order to achieve national development goals. Accordingly, this country has norms and values that must be adhered to so that order and security can be achieved and always maintained. One of the norms owned by a nation in general is the legal norm. The real embodiment of legal norms in society is statutory regulations. With the existence of laws and regulations, there is a standard of behavior and action that if someone does not obey, then that person will get sanctions that can take various forms.

In addition to the existence of several types of legal basis for the formation of laws and regulations in Indonesia, there is also a legal basis for the formation of laws and regulations in Indonesia in the form of Decrees of the Indonesian People's Consultative Assembly and Laws. The following is a discussion of the two legal bases.

MPR RI Decree No. III/MPR/2000

The legal basis for the formation of the first laws and regulations in Indonesia, namely the MPR RI Decree No. III/MPR/2000 which regulates the source of law and the order of laws and regulations in Indonesia. The source of law referred to in this stipulation is all sources used as material or material for the preparation of statutory regulations. In this MPR RI Decree, it is also stated that what is meant by a source of law can have two types of forms, namely written and unwritten. It was also stated that the basic source of national law for this country is Pancasila, as stated in the fourth paragraph of the opening of the 1945 Constitution. In article 2 of this decree it is stated that the order of laws and regulations from the highest is the 1945 Constitution, MPR RI Decree, Laws, Government Regulations in lieu of Laws (Perpu), Government Regulations, Presidential Decrees, and finally, Regional Regulations. . The existence of a sequence of laws and regulations is one of the rule of law characteristics.

In accordance with the statutory regulations that have been mentioned above, every legal rule that is lower in the hierarchy may not contradict the legal rule of a higher degree. In addition, regulations or decisions issued by the Supreme Court (MA), the Supreme Audit Agency (BPK), ministers, Bank Indonesia (BI), agencies, commissions, or institutions of the same level made by the government may not conflict with all provisions stipulated listed in the order of the statutory regulations. The MPR RI Decree also states that the MPR has the authority to review laws against the 1945 Constitution and the MPR, Supreme Court Decree has the authority to review laws and regulations which are below the law, the review is active and can be carried out without going through a cassation court process.

Law no. 12 of 2011

The legal basis for the formation of the next legislation, namely Law no. 12 of 2011 which regulates the establishment of laws and regulations. This law was drafted with the aim of realizing Indonesia as a legal state as stated in article 1 paragraph (2) of the 1945 Constitution. Apart from that, this law is also a form of renewal of Law no. 10 of 2004 which regulates the same thing. However, what is regulated in this law only includes laws and statutory regulations that are hierarchically below it. There are several principles for the formation of laws and regulations that must be adhered to based on this law, namely as follows: (1) clarity of purpose; (2) institutions or officials forming them; (3) suitability between types, hierarchies, and payload materials; (4) can be implemented; (5) effectiveness and usability; (6) clarity of formulation; and; (7) openness.

On the other hand, this Law also regulates what principles must be fulfilled by the material contained in the legislation. The principles in question are protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality in law and government, order and legal certainty, and/or balance, harmony and harmony. This law also states that content relating to criminal provisions can only be contained in laws, provincial regional regulations, or regency/city regional regulations. In addition, the planning of statutory regulations is also regulated in it. For the planning of laws, everything is done in the National Legislation Program or the national legislation program which shows the scale of priorities in the formation of laws. Furthermore, this Law also regulates the stages of drafting statutory regulations for each type and many other regulations.

Material content of the law

The contents of laws and regulations must reflect the following principles: a. protection; b. humanity; c. nationality; d. kinship; e. archipelago; f. Unity in Diversity; g. justice; h. equal position in law and government; i. law order and certainty; and/or j. balance, harmony, and harmony. In (2) Apart from reflecting the principles referred to in paragraph (1), certain Legislations may contain other principles in accordance with the legal field of the relevant Legislations. In Content materials that must be regulated by law are; (1) further arrangements regarding the provisions of the 1945 Constitution; (2) an order for a law to be regulated by law; (4) ratification

of certain international agreements; (5) follow-up on the decision of the Constitutional Court; and/or (6) fulfillment of legal needs in society.

The process of forming laws in Indonesia

In the process of forming laws, there is a transformation of the vision, mission and values desired by the legislature and society in the form of the rule of law. The process of forming laws is regulated in Articles 162–173MD3 Act along with the changes. Apart from being regulated in the MD3 Law, the process for forming laws can also be found in Law no. 12 of 2011 and its amendments which are divided into several stages, including: (1) Planning, regulated in Article 16 to Article 42; (2) Preparation, regulated in Article 43 to Article 64; (3) Discussion, regulated in Article 65 to Article 71; (4) Ratification, regulated in Article 72 to Article 74; (5) Promulgation, regulated in Article 81 to Article 87; (6) More details, can also listen in Presidential Decree No. 87 of 2014 and Presidential Decree No. 76 of 2021 with stages; (7) Bill Planning (Chapter II Part Two); (8) Drafting of Bill (Chapter III Part One); (9) Discussion of the Bill (Chapter IV Part One); (10) Ratification/determination of the bill to become law (Chapter V Part One); (11) Promulgation of Laws (Chapter VI Part One).

Based on information quoted from the DPR's website regarding The Process of the Birth of the Law of the Republic of Indonesia, the following is the essence of the process of forming laws in Indonesia: (1) Planning Stage. The legislature prepares the National Legislation Program (Prolegnas) within the DPR. At this stage, the legislature can invite faction leaders, commission leaders, and/or the public, the legislature coordinates with the DPD and the Minister of Law and Human Rights to formulate and determine the National Legislation Program, the mid-term Prolegnas (5 years) and the annual Prolegnas are determined by a DPR decision, (2) Compilation Stage. Preparation of academic papers by members/commissions/commissions combined, preparation of the initial draft of the bill by members/commissions/joint commissions, harmonization, unification, consolidation, drafting of the bill, a maximum of 20 days during the session, since the bill is accepted by the legislature. Then this stage is re-coordinated by the legislature, the bill resulting from the harmonization of the legislative bodies is submitted by the proposer to the leadership of the DPR, A plenary meeting to decide on the DPR's initiative bill, with the decision (approval without changes, agreement with changes, denial), Completion of the bill if the decision is "approval with amendments" no later than 30 days of trial period and an extension of 20 days of trial period, the revised bill is submitted to the President through a letter from the leadership of the DPR, the President appoints the Minister to discuss the Bill with the DPR, which is no later than 60 days after the DPR's leadership letter is received by the President.

Level 1 talks by the DPR and Ministers appointed by the President, which are held in commission/joint commissions/legislative bodies/budgetary bodies/special committee meetings, Discussion level 2, namely decision making in plenary meetings. Endorsement, the bill is submitted from the leadership of the DPR to the President for approval. Invitation, Bills that have been passed are promulgated in the State Gazette of the Republic of Indonesia.

DPR Plenary Session

The DPR Plenary Meeting is a meeting of members chaired by the leadership of the DPR and is the highest forum in carrying out the powers and duties of the DPR. Meanwhile, we can explain the contents of the level 2 plenary meeting in the process of forming a law, based on Article 69 of Law no. 12 of 2011 namely: (1) *Level II talks are decision-making in plenary meetings with activities: (a) submission of reports containing processes, mini faction opinions, mini DPD opinions, and results of level I discussions; (b) statement of approval or rejection of each faction and member verbally requested by the chairman of the plenary meeting; and (c) submission of the President's final opinion carried out by the assigned minister;* (2) *In the event that the agreement referred to in paragraph (3) letter b cannot be reached by deliberation to reach a consensus, the decision is made based on the majority vote;* (4) *In the event that the Draft Law does not obtain mutual approval between the DPR and the President, the Draft Law may not be submitted again at the DPR session at that time.*

Conclusion

Based on the results of the study, the process of forming laws and regulations in Indonesia is still facing various obstacles so that to finalize a product of the legislative body's law together with the government requires a relatively long time. The draft bill queues according to the priority scale in the National Legislation Program. The normal procedure for forming laws in Indonesia starts from the stages of planning, drafting, discussing, ratifying or enacting until promulgation is a process that takes quite a long time to go through discussions and debates in the legislature to find common ground and agreement. It is not always possible to predict when the process will end at the enactment stage. Meanwhile, the community's need for legal certainty is a more important matter to be fulfilled immediately.

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Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah, dan terakhir kali dengan Undang-Undang Nomor 13 Tahun 2019 tentang Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah;

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