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Legal politics of legislative formation in Indonesia: An analysis of the gap between norms and implementation in the perspective of the state of law

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Abstract
This study examines the legal politics of legislation formation in Indonesia, focusing on the analysis of the gap between norms and their implementation within the framework of the rule of law. Employing a *normative juridical* research method through statutory, conceptual, and case approaches, this study analyzes Law Number 12 of 2011 as amended by Law Number 13 of 2022, along with relevant Constitutional Court decisions as primary objects of inquiry. The findings reveal that although Indonesia's normative framework for legislation formation is relatively comprehensive, national legislative practice remains characterized by significant structural gaps, including political interest dominance, regulatory overlap, weak normative harmonization, and insufficient meaningful public participation. These gaps have demonstrably produced legislation with both formal and substantive defects. An ideal reconstruction of legislative legal politics requires a paradigm shift toward *responsive law*, strengthened institutional capacity of lawmakers, and the systematic institutionalization of regulatory impact evaluation, in order to realize a legislative system genuinely grounded in the principles of a democratic and just rule of law.

Keywords: Gap between norms and implementation, legal politics of legislation, rule of law

Introduction

Indonesia as a country of law (rule of law) has a firm constitutional commitment to forming an orderly, hierarchical, and equitable system of laws and regulations. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that Indonesia is a state of law, which contains the consequence that every exercise of state power must be based on the applicable law (due process of law). However, empirical reality shows that there is a persistent tension between the norms of the formation of laws and regulations as stipulated in Law Number 12 of 2011 jo. Law Number 13 of 2022 concerning the Formation of Laws and Regulations, and the practice of its implementation in the field. This gap is not merely a technical problem of legislation, but reflects a deeper structural problem concerning legal politics (Legal Politics) adopted by state administrators in the process of forming regulations [1].

The most obvious legal phenomenon can be seen from the rampant laws and regulations that have been canceled by the Constitutional Court and the Supreme Court due to procedural and substantial defects. Data from the Constitutional Court shows that hundreds of legal norms have been declared unconstitutional in the past decade, indicating that the regulatory process has not fully complied with the principles of good legislation. On the other hand, the hasty formation of regulations, the lack of meaningful public participation, and the weak harmonization between regulations are recurring portraits in national legislation practice. The revision of the KPK Law in 2019 and the establishment of the Job Creation Law, which was later declared conditionally unconstitutional by the Constitutional Court through Decision Number 91/PUU-XVIII/2020, are concrete evidence of how serious the gap between norms and implementation is in the formation of laws and regulations in Indonesia.

Theoretically, the study of the legal politics of the formation of laws and regulations has received attention from various legal scholars. Moh. Mahfud MD defines legal politics as the official state policy regarding laws that will be enforced or not enforced in order to achieve state goals. Within the framework of theory Legal System developed by
Lawrence M. Friedman, the effectiveness of a law is determined by three components, namely the substance (Legal Substance), structure (Legal Structure), and legal culture (Legal Culture). If these three components do not run synergism, the resulting legal products tend to experience dysfunction at the implementation level. In addition, the theory Responsive Law initiated by Philippe Nonet and Philip Selznick provides a framework that law should be responsive to social needs, not just an instrument of momentary political power [2].

Previous studies generally focused on the procedural aspects of law formation, analysis of the constitutionality of certain legislation products, or partial evaluation of Law Number 12 of 2011. However, there has not been much research that comprehensively integrates the political dimension of law, norm-implementation gap analysis, and the perspective of the state of law in one complete and systematic analytical framework. This is where it is located Gap Research from this study. The majority of the existing literature tends to be descriptive-normative without exploring the root of the structural causality of the disparities that occur, and lacks a conceptual framework that can be used as a reference for future legislation reform [3]. The novelty or novelty of this research lies in the effort to build an integrative analysis that connects political and legal variables as the main determinant of the quality of laws and regulations, by making the perspective of the state of law as keystone or the touchstone of the entire legislative process that took place in Indonesia after the reform of constitutional law [4].

This condition is increasingly relevant to be studied considering the changes to the Law on the Establishment of

Laws and Regulations through Law Number 13 of 2022 which formally introduced the omnibus law method into the Indonesian legal system. The adoption of this method has major implications for the mechanism of harmonization, public participation, and transparency of the legislation process which has been the standard in democratic law formation. Various academics and legal practitioners consider that the regulation regarding the omnibus law actually opens up space for simplification of procedures that have the potential to sacrifice the quality of substance and public participation in the legislation process.

Based on this background, this study formulates three main problems: first, how is the legal politics of the formation of laws and regulations in Indonesia regulated in the applicable normative framework?; Second, the extent of the gap between the norms of the formation of laws and regulations and their implementation in the practice of national legislation?; and third, how is the political reconstruction of the formation of ideal laws and regulations in the perspective of the state of law in Indonesia? In line with the formulation of the problem, this study aims to: first, analyze the normative framework of legal politics in the formation of laws and regulations in Indonesia; second, identify and describe the gap between norms and implementation in national legislation practice; and third, formulate a model of political reconstruction of legislation that is responsive, participatory, and in accordance with the principles of the rule of law. The benefits of this research are expected to make a theoretical contribution to the development of constitutional law and legislation, as well as contribute practical recommendations for legislative, executive, and stakeholder institutions in an effort to improve the quality of national regulations in an ongoing manner.

Research Methods

This study uses the normative juridical (Normative Legal Research), which is a legal research method that focuses its study on the analysis of written legal materials as the main source of data. The choice of this method is based on the characteristics of the problem being studied, namely examining the gap between the norms of the formation of laws and regulations and their implementation in national legislation practice, so that the legal document-based approach is considered the most relevant and epistemologically appropriate [5].

The approach used in this study includes three synergistic approaches. First, the statute approach, which is to review all regulations related to the formation of laws and regulations, especially Law Number 12 of 2011 jo. Law Number 13 of 2022. Second, the conceptual approach is used to examine theoretical concepts such as legal politics, the state of law (rechtsstaat), and good legislation as analytical knives. Third, the case approach is applied to analyze relevant Constitutional Court decisions as a concrete reflection of the gap in norms and implementation in Indonesian law practice.

The sources of legal materials in this study are classified into three categories. Primary legal material including the 1945 Constitution of the Republic of Indonesia, laws related to the formation of laws and regulations, and decisions of the Constitutional Court. Secondary legal material It includes scientific literature, national and international law journals, constitutional law textbooks, and the results of previous research related to the topic of study. The Tertiary Legal Materials includes legal dictionaries, encyclopedias, and glossaries of legislation used to clarify technical terminology [6].

The technique of collecting legal materials is carried out through systematic library research by tracing legal sources from scientific databases such as Google Scholar, HeinOnline, and official repositories of state institutions. All the collected legal materials are then analyzed using a prescriptive-analytical method, which is not only describing the existing norms, but also evaluating their conformity with the principles of the state of law and providing constructive conceptual recommendations. The interpretation of legal materials is carried out through systematic, grammatical, and teleological interpretation methods in order to obtain a complete and comprehensive understanding of the problems being studied.

Discussion

Normative Framework of Legal Politics for the Formation of Laws and Regulations in Indonesia

Legal politics as an instrument of state policy in forming and enforcing laws has a solid constitutional foundation in the Indonesian legal system. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms Indonesia's position as a rule of law, which inherently contains an obligation that any regulatory process must be subject to the principles of the rule of law, namely the rule of law, equality before the law, and the guarantee of the fundamental rights of citizens. In this context, the 1945 Constitution functions not only as the highest norm in the legislative hierarchy, but also as a keystone or the constitutionality of any legislation product produced by an authorized state institution [7].

Normatively, the framework for the formation of laws and regulations in Indonesia is regulated through Law Number 12 of 2011 which was later amended by Law Number 13 of 2022. The changes brought a number of significant updates, including the formalization of the The Omnibus Law, strengthening meaningful public participation mechanisms through Article 96, as well as digitizing the legislation process through recognition of the use of electronic signatures in the formation of laws. From a theoretical perspective Stufenbau des Rechts stated by Hans Kelsen, all legal norms must be sourced and must not contradict higher norms, so that each stage of the formation of laws and regulations is actually an actualization of the will of the constitution [8]. However, this normative framework, which is technically relatively comprehensive, has not been able to automatically produce quality legislation products, because it still depends on the integrity, commitment, and capacity of lawmakers in implementing the principles of regulatory formation that have been outlined.

Furthermore, the normative framework of legal politics for the formation of laws and regulations in Indonesia cannot be separated from the construction of a pyramidal hierarchy of norms. In this structure, any regulation that is at a lower level must substantively reflect and must not deviate from the norms that are above it. The principle of hierarchy of norms is actually not just a technical-formal requirement, but a constitutional guarantee so that there is no fragmentation of the legal system that can weaken legal certainty (Legal certainty) for all citizens [9].

Within the framework of responsive legislation theory, the formation of good laws and regulations requires synchronization between three fundamental dimensions, namely the philosophical dimension that comes from the

values of Pancasila, the sociological dimension that reflects the real needs of society, and the juridical dimension that ensures the consistency of norms in the applicable legal system. Failure to integrate these three dimensions simultaneously will result in regulations that, although formally legitimate, lose substantive legitimacy before the society that the law is supposed to protect.

In addition, the principle of openness (Openness) as mandated in Law Number 13 of 2022 requires that all stages of the formation of laws and regulations, from planning, drafting, discussion, ratification, to promulgation, must be accessible and monitored openly by the public. This principle is a direct derivation of the principle of deliberative democracy which emphasizes that legal legitimacy does not only come from formal procedures, but also from the quality of public discourse that underlies the birth of a regulation. In other words, legal norms that are produced without going through an authentic public deliberation process will tend to be elitist and unresponsive to the aspirations of the wider community, so they have the potential to cause resistance in the implementation stage [10].

Another aspect that is no less crucial in the normative framework of Indonesian legal politics is the mechanism Judicial Review as an instrument of constitutional control. The Constitutional Court acts as a The Guardian of the Constitution which has the authority to test laws against the 1945 Constitution, while the Supreme Court has the authority to test regulations under the law. These two test lines simultaneously form a normative supervision architecture that should be able to correct any legislation product that deviates from the will of the constitution. However, the effectiveness of this mechanism is highly dependent on the accessibility of citizens in submitting tests, the speed of the examination process, and the consistency of the results produced [11].

It should also be noted that the quality of Academic Manuscripts as the scientific documents underlying each Bill has a direct correlation with the quality of the substance of the norms produced. In practice, academic papers are often compiled as mere formalities, only to meet procedural requirements without really functioning as a scientific basis that directs the substance of regulations. This condition indicates that the political issue of legislation does not only lie in the norms that govern the rule-making process, but also in the integrity and professionalism of the actors involved in it.

On the other hand, strengthening the capacity of legal drafters or drafters of laws and regulations is an urgent institutional investment to be made. A competent legal drafter is not only required to understand formal legislation techniques, but must also be able to conduct sociological analysis of the impact of regulations, understand the legal political context surrounding the formation of a regulation, and integrate the human rights perspective in each norm formulated. Without this systematic capacity building, the existing normative framework will never be optimally realized in actual legislative practice (Cahya, t.t.).

The Gap between Norms and Implementation in National Legislation Practice

Although the normative framework for the formation of laws and regulations in Indonesia has formally accommodated various principles of good regulation formation (Principles of Sound Legislation), empirical reality shows that there is a massive and systemic gap between ideal norms and ongoing legislative practices. This gap can be identified at least in three main dimensions, namely the dimensions of substance, procedure, and legal culture. In the dimension of substance, there is still an overlap (overlap) intersectoral regulation, inconsistency of norms between equivalent regulations, and weak vertical and horizontal harmonization are clear reflections that the legislative process has not been consistently based on the principle of integration and consistency of norms [12].

From a procedural dimension, the practice of law formation in Indonesia often takes place in a very short span of time without being accompanied by in-depth academic studies and substantive public participation. This phenomenon is clearly reflected in the formation of the Job Creation Law which was later declared conditionally unconstitutional through the Constitutional Court Decision Number 91/PUU-XVIII/2020, with one of the main considerations being formal defects due to the formation process that did not meet the standards of meaningful participation. This shows that the dominance of political interests in the legislative process has the potential to shift the orientation of law formation from the goal of prospering the people to a mere instrument of power legitimacy. In Lawrence M. Friedman's theory of the legal system, weaknesses in the components of legal structure and culture will directly weaken the resulting legal substance, creating a vicious circle of dysfunctional legislation that is difficult to break without thorough reform.

The dysfunctional condition in the practice of national legislation is further aggravated by the weak internal supervision mechanism in the process of forming laws. The supervisory function that should be carried out by the Legislative Body of the House of Representatives often does not run optimally due to the pressure of the interests of political factions that prioritize political compromise over the quality of legal substance. As a result, the resulting legislation product reflects more momentary political consensus than the long-term legal needs of the community, which in turn widens the gap between written norms and the reality of their implementation on the ground [13].

Phenomenon hyper-regulation or excessive production of regulations without adequate impact evaluation is also one of the tangible manifestations of the gap in norms and implementation in the Indonesian legislation system. When the volume of regulations continues to grow exponentially without being balanced by adequate institutional implementation capacity, what happens is not legal certainty but normative chaos (Chaos Regulations) which actually confuses the public and law enforcement officials. This condition ultimately weakens Rule of Law systemically because the law no longer serves as a clear and predictable code of conduct [14].

Furthermore, the absence of an ex post evaluation mechanism that is systematic and has legal force adds to the complexity of the problem. Without instruments that periodically measure the effectiveness and social impact of a regulation after it is promulgated, lawmakers do not have adequate feedback to make timely and evidence-based regulatory improvements. This causes regulations that have proven to be ineffective to remain in place for a long time, while the public bears the burden of legal uncertainty that should not have occurred if the legislation evaluation mechanism had been functioning properly.

The problem of the gap between norms and implementation in national legislation is also inseparable from the phenomenon Legal Transplant that are not accompanied by

adequate contextual adaptation. Adoption of legal concepts and instruments of foreign legal systems, including The Omnibus Law adopted from the legal tradition common law, without careful adjustment to the characteristics of the Indonesian legal system on which Civil Law and Pancasila values, have the potential to create normative incompatibility that actually exacerbates existing legal uncertainty [15].

The implementation gap is also exacerbated by weak coordination between institutions in the regulatory harmonization process. When ministries and state agencies produce sectoral regulations without adequate coordination with other agencies, what happens is a proliferation of conflicting and overlapping regulations. This condition not only confuses the public as a subject of the law, but also makes it difficult for law enforcement officials to determine which norms should be prioritized in resolving a case (Utami et al., 2024).

In a theoretical perspective Living Law According to Eugen Ehrlich, the laws that actually live and apply in society are not always identical to the laws written in laws and regulations. Gap between Law in Books and Law In Action which is so broad in the context of Indonesian legislation reflects that the existing legal norms have not succeeded in transforming themselves into laws that are truly alive and obeyed in the daily life of the community. Therefore, it is not enough to reform legislation only touching the textual aspect of regulations, but must be able to reach the transformation of legal behavior at the practical and cultural level [15].

The dimension of legal culture is also a determining factor in widening this gap. The low legal culture among lawmakers, which is reflected in the lack of respect for the principle of lex certa (clarity of norms), has given birth to legislation products that are multi-interpreted and vulnerable to abuse. The examination of the constitutionality of Articles 433 and 434 of the New Criminal Code in the Constitutional Court Decision Number 12/PUU-XXIV/2026 provides a contemporary illustration of how the use of vague phrases such as "other persons", "accuses something", and "public interest" can threaten the freedom of expression of citizens guaranteed by Article 28E of the 1945 Constitution, while creating legal uncertainty that is contrary to Article 28D paragraph (1) of the 1945 Constitution.

Legal Political Reconstruction of the Formation of Laws and Regulations in the Perspective of the Legal State

Starting from the analysis of the gaps that have been described, the political reconstruction of the law and the formation of laws and regulations in Indonesia is absolutely necessary so that the legislative system can function optimally within the framework of a democratic state of law. This reconstruction must be based on three main pillars, namely strengthening substance, improving procedures, and transforming the legal culture of legislation. Substantively, every process of forming laws and regulations must begin with a comprehensive scientific study through the preparation of quality academic papers, oriented to the needs of real society, and consistent with the hierarchy of norms that apply according to the principles of stufenbau Kelsen.

In a theoretical perspective Responsive Law Nonet and Selznick, a good law is a law that is able to respond to social needs adaptively without losing its integrity as a system of norms. Therefore, the political reconstruction of Indonesian legislation must move from the legal paradigm that is Repressive and Autonomous towards a legal paradigm that Responsive, by opening up more meaningful spaces for public participation (meaningful participation), increasing the transparency of regulatory discussions, and strengthening the harmonization mechanism between regulations systematically. Method application The Omnibus Law which has been formalized in Law Number 13 of 2022 needs to be implemented carefully and accompanied by strict supervision so that it is not used as a justification for simplifying procedures that sacrifice quality of substance and democratic participation [10].

In the context of a more fundamental reconstruction, the transformation of the law-making paradigm from rule by law to a true rule of law is an innegotiable prerequisite. The difference between the two is not just terminological, but concerns the fundamental orientation in the state of law. Rule by law places law as an instrument of power, while rule of law places law as the limit and control of power itself. As long as the formation of laws and regulations is still dominated by the first logic, the gap between ideal norms and actual implementation will continue and even widen.

Reconstruction also requires fundamental improvements in the national legislation planning system. The National Legislation Program (Prolegnas), which has been more often functioning as a political wish list, needs to be transformed into a legislative planning instrument that is truly based on the legal needs of the community, supported by in-depth academic studies, and equipped with measurable priority indicators that can be accounted for publicly. This Prolegnas reform must be accompanied by strengthening the role of independent institutions, academics and civil society in the process of drafting and evaluating the national legislation agenda.

Finally, the internalization of the constitutional values of Pancasila into every stage of the formation of laws and regulations becomes an ethical foundation that cannot be ignored in the political reconstruction of Indonesian legislation. Pancasila as a grundnorm It is not only positioned as a formal source of law, but also as a moral compass that must guide every legislative decision so that it is always oriented towards social justice, respect for human dignity, and national unity. Thus, the reconstruction of legal politics based on Pancasila will produce a legal system that is not only formally valid, but also substantive and constitutionally legitimate [16]. Furthermore, strengthening the institution of legislation through increasing the technical capacity of regulatory drafters (Legal Drafter), the empowerment of the functions of the DPR Legislation Body professionally, as well as the integration of evaluation mechanisms ex post the impact of regulation is inevitable in the architecture of national legislation reform. Thus, the legal politics of the formation of laws and regulations in Indonesia can be directed consistently towards the ideals of a state of law that is not only formal-procedural, but also substantive and just, as required by the constitution and imbued with the values of Pancasila [11].

Conclusion

Based on the results of the analysis that has been described in the discussion, it can be concluded that the legal politics of the formation of laws and regulations in Indonesia normatively have a relatively comprehensive framework, as

reflected in Law Number 12 of 2011 jo. Law Number 13 of 2022. However, the normative framework has not been able to optimally guarantee the quality of the legislation products produced, due to the still strong dominance of political interests, weak harmonization of regulations, lack of meaningful public participation, and low legal culture among lawmakers. This structural gap between ideal norms and actual implementation has been proven to give birth to legislation products that are formally and substantively flawed, as affirmed through various Constitutional Court rulings that invalidate a number of legal norms because they are contrary to the constitution.

The implications of these findings suggest that improving the quality of national legislation cannot be done partially, but rather requires systemic and comprehensive reforms that include the dimensions of legal substance, procedures, institutions, and culture at the same time. Failure to harmonize the three dimensions of Friedman's legal system, namely the structure, substance, and legal culture, will continue to result in dysfunctional regulations and loss of legitimacy in the eyes of the public. In this regard, this study recommends three main things. First, strengthening the technical capacity of legal drafters and professionalizing the functions of the DPR Legislation Body on an ongoing basis. Second, the institutionalization of an ex post evaluation mechanism on the impact of regulations as an instrument of legislative quality control. Third, the transformation of the legislation paradigm from a short-term political orientation to a responsive law orientation that is truly in favor of the needs of the community and the constitutional values of Pancasila.

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