



The Process of Formulating Legislation

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Abstract—The development of national law in Indonesia is influenced upon the preparation of legislation, which is contingent upon the implementation of effective methods that bound all authorised institutions in the lawmaking process. The purpose of this study is to examine the underlying principles involved in the formulation of law in Indonesia, as well as the issues and barriers that arise during implementation. The primary goal of this research is to determine how far the current lawmaking process adheres to the principles of the rule of law in Pancasila, the protection of human rights, the principle of equality before the law, and the established principles of lawmaking outlined in applicable laws. This research also asks for to determine the extent to which a legal system that is just transparent, and responsive to society's needs can be formed through the legislative process, which is conducted by legitimate institutions that are selected through democratic processes. This paper investigates how Indonesia's legislative machinery might be improved to provide legal certainty and democratic government using normative and historical perspectives. This study is projected to improve the lawmaking process in Indonesia, promoting the creation of planned, integrated, and sustainable national law.

Keywords: Formation of regulations, Legislation.

INTRODUCTION

Laws are essential for the governance of a country. The protection of human rights, the achievement of social welfare objectives, and public policies are all founded on a set of binding rules known as laws. Laws develop fairness and balance in society as well as legal rules. Consequently, the sustainability of a fair and prosperous state is contingent upon the establishment of high-quality and effective laws. Law Number 12 of 2011 regarding the Formation of Legislation states in Article 1, Point 2 that legislation is a written regulation encompassing legal norms that are generally binding. State institutions or officials who have been granted authority through procedures outlined in the legislation enact and establish it. "The process or method of creating national regulations at all levels, starting at the lowest, by allocating and delegating legislative authority until all legislative products are created," Soehino says of legislation.

Hamid S. Attamimi, Bagir Manan, and Sri Soemantri are constitutional law specialists who utilise the term "*peraturan perundang-undangan*" (legislation). "The term is not used absolutely," A. Hamid S. Attamimi said. The term "*perundang-undangan*" (legislation) is also employed in isolation. However, "*peraturan perundang-undangan*" is better for discussing legislation. In different contexts, the term "*perundang-undangan*" is more relevant, particularly when addressing the philosophy underlying legislation or the legislation itself. Whether seen in terms of function, rule of law, or legal norm hierarchy, a country's laws are strategic. Laws serve as a mechanism for the formulation of legal standards within a nation, thereby reinforcing the rule of law.

Ideal legislation must undoubtedly comply with the fundamental principles of good legislation (*beginnselen van behoorlijke wetgeving*) and general legal principles (*algemene rechtsbeginnselen*), which encompass the principles of a law-based state (*rechtstaat*), a constitutional government, and popular sovereignty. The government and legal system

operate on a universal foundation known as the rule of law. All government actions must be predicated on the legality principle. In Indonesia, the principles of Indonesia's Legal Ideals, the Principle of a State Based on Law, the Principle of Government Based on the Constitution, and others should be the foundation of permissible legislation, according to Attamimi. It is undeniable that the process of enacting laws is challenging, time-consuming, and encompasses many stages. The research will fully cover the process of founding good laws in accordance with the procedures, and this guarantee a fair and prosperous national life.

II. METHOD

This research uses a normative legal approach as its primary framework for looking at Indonesia's legislative process. With the goal to examine the extant regulations and the principles it govern the creating of laws within the legal framework of Indonesia, the normative legal approach was selected. This approach allows the researcher to study critical legal resources, including the Constitution of the Republic of Indonesia, current law and technical instructions or norms that govern the legislative process. The research endeavours to assess the legislative process's consistency and congruence with established legal norms and procedures, as well as to identify potential enhancements to produce higher-quality laws, through this methodology.

To gain additional insight into the ways Indonesia's legislative process has evolved, we shall also look at the past. This method is paramount because the legislative system has been shaped over time by the history, political and social dynamics, and current regulations that have influenced the lawmaking process. This research endeavours to comprehend the factors that have influenced lawmaking over the years, as well as to trace changes and developments in legislative procedures, by employing the historical approach. A more thorough look of the shortcomings or difficulties that currently exist in Indonesia's legislative process will be possible thanks to the historical approach's wider context.

The research questions or objectives will be clearly linked to the chosen approaches in this part to provide organisation and emphasis. The study issue is how to enhance the lawmaking process in Indonesia, both technically and substantively, to develop more effective and responsive laws that fulfil social demands. To do this, the normative and historical methods will be paired with a thorough assessment of the literature, an analysis of current rules, and interviews with legal practitioners and other legislative stakeholders. It is envisaged that this strategy would help to improve the quality of the lawmaking process in Indonesia (Asshiddiqie, 2005).

III. RESULT AND DISCUSSION

1. The Process of Forming Laws

The lawmaking process in Indonesia consists of multiple stages as outlined in Law No. 12 of 2011 concerning the Formation of Legislation. The process commences with planning, as indicated by the National Legislation Program (*Prolegnas*), which functions as a framework for establishing the priorities of laws to be deliberated and enacted. Subsequently, the draft bills (*RUU*) undergo deliberation by the legislative and executive branches via a series of meetings and consultations. Upon approval, the bill will be enacted into law subsequent to the approval process during a plenary session of the *DPR*.

With reference to the Republic of Indonesia's 1945 Constitution, the following parties may submit a draft law (*RUU*): the Government (President), in accordance with Article 5, paragraph (1), which states, "The President has the right to propose a draft law to the People's Representative Council"; the *DPR* (People's Representative Council), in accordance with Article 20, paragraph (1), which affirms, "The People's Representative Council holds the power to form laws," and Article 21, which states, "Members of the People's Representative Council have the right to propose a draft law"; and the *DPD* (Regional Representative Council), in accordance with Article 22D, paragraph (1), which states that the Regional Representative Council may propose to the People's Representative Council a draft law on regional autonomy, the relationship between central and regional governments, the formation and expansion of regions, the merger of regions, the management of natural resources, other

economic resources, and the financial balance between the central and regional governments (Astawa, 2008).

Since law 10 of 2004 on the Formation of Legislation was replaced and strengthened by Law 12 of 2011, the method and mechanism for creating legislation have been integrated into a single statute. According to this legislation, legislative development encompasses the planning, draughting, discussion, ratification or establishment, and proclamation phases of the regulatory development process.

2. Planning Stage

A strategy and scale of priorities for the laws that the *DPR* will enact over a specific time period is established by the *DPR* and the government during the law draughting planning process. Guiding this process is the National Legislation Program (*Prolegnas*). In consequence, *Prolegnas* and the phases associated with the design and draughting of a legislation are inextricably linked. Particularly in the context of the growth of legal texts, *Prolegnas* is a vital tool for the planning of national legal evolution. The legislative formulation program is organised by the government and the *DPR* in a methodical, integrated, and planned manner using *Prolegnas*, a tool.

Through its legislative body, the *DPR* Legislative Body, the *DPR* assists the liaison of the *Prolegnas* draughting process between the *DPR* and the government, taking into account input from the public, *DPD*, commissions, factions, and *DPR* members. The minister in charge of legal matters inside the government, In the meantime, monitors the *Prolegnas*' preparation. It is the Minister of Law and Human Rights in the present instance (Manan, 1992).

The preparation of the draft law list in the *Prolegnas* is based on, among other things:

- a. The Mandate of the 1945 Constitution of the Republic of Indonesia
- b. *MPR* Decree Directive
- c. Legal Order
- d. National Development Planning System
- e. National Long-Term Development Plan
- f. Medium-term development plan
- g. The government's work plan and the *DPR*'s strategic plan and
- h. Aspirations and legal needs of the community.

The *Prolegnas* preparatory materials are also based on Law Number 17 of 2007 on the National Long-Term Development Plan (RPJPN). This RPJPN can be used as a reference to ascertain the course of development over a two-decade period.

The *RPJPN* for the years 2005-2025 is formulated with several objectives that include eight main targets over the next 20 years, namely:

- a. Related to the realization of a society that is noble in character, moral, ethical, cultured, and civilized
- b. A competitive nation to achieve a more prosperous and thriving society
- c. A democratic society based on law and justice
- d. The realization of a sense of security and peace for all citizens, as well as the preservation of the integrity of the NKRI territory and national sovereignty from threats both domestic and foreign.
- e. The realization of more equitable and just development
- f. The realization of a beautiful and sustainable Indonesia
- g. The realization of Indonesia as an independent, advanced, strong archipelagic nation based on national interests
- h. The realization of Indonesia's binding role in international relations.

Prolegnas serves as a filter for the Republic of Indonesia's 1945 Constitution and Pancasila's legal incorporation. Second, the *Prolegnas* functions as a mechanism and procedure for the development of legislation, ensuring that the plan is implemented with the appropriate procedures and mechanisms. In this context, the *Prolegnas* represents the legal content strategy for achieving the state's objectives over five years in line with Pancasila, the Republic of Indonesia's 1945 Constitution, and the national legal system (Saifuddin, 2009).

3. Preparation Stage

Writing a bill starts with an academic paper. The Academic Manuscript is a document produced by legal study, studies, and other research on a particular issue that may be scientifically justified for regulation in a draft legislation in response to societal legal concerns and needs.

The purpose of creating the Academic Manuscript in the preparation of the Draft Law is (Santoso, 2021):

- a. Making it easier for policymakers to find policies
- b. Facilitating planning, for example, when it should be completed
- c. Facilitating legal drafters in formulating the norms of the legislation to be created
- d. As material that shows that the regulations to be made are already ready because they are supported by adequate data and information.

The *DPR*, *DPD*, or government initiates this academic manuscript in accordance with Appendix I, which is an essential part of Law Number 12 of 2011 on legislation formation. *DPR* members, A Commission, Joint Commission, or *DPR* or *DPD* legislative body may present a bill. Multiple *DPR* members or commission, joint commission, or legislative leadership submit the *DPR* initiative bill proposal in writing. The *DPR* leadership would next seek a plenary session of the Deliberative Body (Bamus) to review the proposed initiative bill to gain wide support. (Manan, Fundamentals of Indonesian Legislation, 1992)

A bill proposal can be filed by at least one-quarter of the total number of *DPD* members. After the bill proposal is approved by the *DPD* leadership, the session chair will notify and distribute it to all *DPD* members during the next *DPD* plenary session. There are three categories of plenary session decisions, which are as follows:

- a. Accepted without changes
- b. Accepted with changes; or
- c. Rejected.

The Legislative Draughting Committee is being assigned by the *DPD* to evaluate and enhance the bill proposal, should it receive approval with modifications. The adopted draft measure, along with the refined bill, will be sent to the People's Representative Council and the President, accompanied by a cover letter from the *DPD* leadership.

Following the *DPR*'s invitation, the *DPD* will subsequently review the proposed bill. The Ad Hoc committee that addresses the topic of the bill under consideration and/or the legislation draughting committee represents the *DPD* in the discussion. The *DPR*'s negotiations with the government are based on the findings of the *DPD*'s draft bill debate.

If the measure is no longer a source of concern, both in terms of legislative draughting and substance, the proponent submits it to the president, who then conveys it to parliament.

4. Stage of Bill Discussion in the DPR

The President or the designated minister must discuss all measures together with the House of Representatives (*DPR*), the Regional Representative Council (*DPD*), or the government. This stage is known as the argument stage. Two phases of discussion are used to debate the bill, and they are as follows:

During first-level talks, commission meetings, joint commission meetings, legislative body meetings, budget committee meetings, or special committee meetings, the following activities are conducted. As part of the first level discussion, the heads of state institutions or other institutions may be invited to a hearing or public hearing.

Second-level discussions, which are conducted in a plenary session. The activities in the second-level discussion include decision-making in the plenary session, preceded by;

- a. Report on the results of the first-level discussion
- b. The final opinion of the faction conveyed by its members and, if deemed necessary, can also be accompanied by notes on the faction's stance;
- c. and the president's final opinion conveyed by the minister representing him (Asshiddiqie, 2005).

The *DPD* is engaged in the discourse surrounding the bill's provisions concerning regional autonomy, the relationship between the central and regional governments, the

formation, expansion, and merging of regions, the management of natural resources and other economic resources, and the balance of power between the two. The law that has been mutually authorised by the president and the *DPR* will be transmitted to the president for approval after the second level of debate has concluded.

5. Validation Stage

A measure that has been approved by both the President and the *DPR* must be presented to the President by the *DPR* leadership before it may become law. Within seven days after the date of mutual consent, the bill must be turned in. Ratification is accomplished by signing the bill within thirty days of its joint approval by the *DPR* and the President. If the authorised measure is not signed by the president within thirty days after its joint approval, it is declared lawful and must be passed (Shidarta, 2007).

The minister responsible for legislation promulgates the law by publishing it in the state gazette and the supplementary state gazette, accompanied by its number and year, after the president ratifies the bill, which has been mutually adopted by the House of Representatives. Next, the minister who issued the law will affix their signature to the law paper. Return it to the State Secretary or Minister to ensure compliance with the requirements.

6. Stage of Enactment and Dissemination

Essentially, no piece of legislation that has been passed has broad binding force unless it is published. Therefore, it is mandatory for the State Gazette and the Supplement to the State Gazette to publish all laws that have been passed. This legislation seeks to make everyone aware of the laws and regulations that the state enforces. Everyone is considered to have been aware of the regulation since it was implemented.

The following laws are published in the State Gazette of the Republic of Indonesia in accordance with Law Number 12 of 2011 on the Formation of Legislation:

- a. Law / Government Regulation in Lieu of Law
- b. Government Regulation
- c. Presidential Regulation and
- d. Other regulations that, according to applicable laws, must be published in the State Gazette of the Republic of Indonesia.

Legislation that is published in the State Gazette or the State News must be distributed by the government. The dissemination aims to assist the public understand and appreciate the legislation's meaning so that they can put the provisions into effect (Yuliandri, 2009). The Government must publish approved laws in the State Gazette and the State News, while the Regional Government must publish enacted legislation in the Regional Gazette and Regional News. Legislation may be distributed via print media, electronic media, and other sources.

7. The Process of Forming Government Regulation in Lieu of La

Government regulations in lieu of law, often known as *PERPU*, are legislative guidelines issued by the president in times of emergency. "In the event of an urgent situation, the president has the right to issue a government regulation in lieu of law." This clause grants the president the authority to issue this government regulation in place of law.

In an emergency, the president may adopt a government rule instead of a law. Under the 1945 Constitution of the Republic of Indonesia, the president is granted the complete authority to issue a government regulation (*PERPU*) in lieu of a law. If this happens, a government rule is made instead of a law (*PERPU*). Its creation varies from lawmaking. A government regulation in place of legislation (*PERPU*) is formed by the president without the participation of parliament (*DPR*) in response to an urgent public interest problem, while a law is created by mutual agreement between the president and the *DPR* under normal circumstances (Thaib, 1999).

The bill regarding the ratification of a government regulation in lieu of legislation (*PERPU*) into law is addressed in the same manner as other laws, with the *DPR* exercising the authority to either adopt or reject the *PERPU*. If the *DPR* rejects the draft legislation for the ratification of the regulation in place of law, it cannot be implemented. As a result, the

president must provide a draft bill for the revocation of the government regulation in lieu of law (*PERPU*), which may contain measures addressing the consequences of the *PERPU*'s conversion into law.

8. The Process of Forming Regional Regulations

With the approval of the regional head, the Regional People's Representative Council *PERPU* promulgates regional regulations, or (*Perda*). The Republic of Indonesia's 1945 Constitution's Article 18, paragraph (6), provides the legal framework for the establishment of regional regulations. "Regional governments have the right to establish regional regulations and other regulations to implement autonomy and delegated tasks" and Law 23 of 2014 on Regional Government states which "to implement regional autonomy and delegated tasks, regions establish regional regulations" (Yuliandri, 2009).

The emergence of regional regulations (*Perda*) is a distinct procedure from the establishment of other regional legal products. The process of producing a Regional Regulation (*Perda*) is similar to that of forming legislation, starting with planning, draughting, debate, resolution or ratification, and publication.

One function of local government administration within the framework of regional autonomy is the formulation of regional regulations (*Perda*). One of the most significant variables in the success of regional autonomy implementation is the availability of proper regional rules to guide local government administration.

9. Stage of Planning the Draft Regional Regulation

The planning stage of the draft Regional Regulation is connected to the regional legislation, also known as the Prolegda. Planned, integrated, and methodical, Prolegda is a tool for organising the program for establishing regional regulations.

Using a priority scale to make regional regulation drafts, Prolegda is created and will be in force for a year. The presence of an order from a higher regulator is one of the aspects that contribute to the formation of the basic structure of the priority scale. (b) plans for the development of the area; (c) the implementation of regional autonomy and the tasks that have been allocated; and (d) the objectives of the local community (Manan, Fundamentals of Indonesian Legislation, 1992).

In certain circumstances, the Regional House of Representatives *PERPU* or the Regional Head may also propose a draft regional regulation outside the prolegda for matters including:

- a. To address extraordinary situations, conflict situations, or natural disasters
- b. As a result of cooperation with other parties,
- c. Certain other circumstances that necessitate the urgency of a draft regional regulation that can be jointly approved by the *DPRD*'s special legislative and legal bureau.

10. Stage of Drafting Regional Regulation

The draft regional regulation may be sourced from the regional administration or the Regional People's Representative Council *PERPU*, as previously expressed. The draft regional regulation (*Perda*) may be offered by members, commissions, joint commissions, or the *DPRD*'s specific bodies that handle legislative issues, including the Regional Legislative Body (*Balegda*). The regional government's draft regional regulation will be used as a point of comparison and the *DPRD*'s draft regional regulation will be discussed if the regional government submits a draft regional regulation on the same subject at a *DPRD* session.

Whether they are from the *DPRD* or the Regional Government, the initiators at this stage of writing must include an academic paper with the Draft Regional Regulation. The academic manuscript is a document resulting from legal research or study, as well as other research findings on a particular issue, that may be scientifically justified in a draft Regional Regulation established to address a problem and fulfil the community's legal expectations. The method of writing the academic manuscript The draught regional regulation adheres to the Academic Manuscript Preparation approach outlined in Appendix I of Law Number 12 of 2011 dealing with the Formation of Legislation (Yuliandri, 2009).

11. Stage of Discussion and Establishment of Regional Regulation Draft

After the Regional People's Representative Council *PERPU* and the Head of Region have mutually agreed the Draft Regional Regulation, the Head of Region must sign it within 30 days. The regional rule proposed by the Head of Region is subsequently assigned a number and year by the Regional Secretary for its publication in the Regional Gazette. The Draft Regional Regulation shall be considered a Regional Regulation and must be published, along with the validation line "This Regional Regulation is declared valid" by the Regional Secretary, if the Regional Head does not sign it within 30 days. The last page of the proposed regional rule must have the ratification sentence appended before it may be published in the regional gazette. The regional rule draft, accompanied by the endorsement sentence, is subsequently numbered and dated prior to its promulgation by the regional secretary (Soehino, 1984).

12. Stage of Regional Regulation Enactment

Enactment is the formal publishing of a rule in an official state publication designated for that purpose and in accordance with relevant regulations. Passage of the rule makes it a state regulation. The binding effect of a rule necessitates its promulgation. When a rule is promulgated, it is generally obligatory. While the supplementary regional gazette is for explanations, the regional gazette is for regional regulations.

Regional laws. In the meanwhile, the Regional News will issue Regional Head laws such as Governor laws and Regent/Mayor Regulations. Regional regulations that have been developed and enacted must be published in the Regional Gazette, with explanations provided in the Supplement to the Regional Gazette. The Provincial Regional Secretary disseminates Provincial Regional Regulations in the Provincial Regional Gazette and District/City Regional Regulations in the District/City Regional Gazette, respectively. The Regional Secretary endorses the adoption of the Regional Regulation by signing the text of the proposed regulation. The Regional Regulation is thereafter recorded in its original form and preserved by the Regional People's Representative Council *PERPU*, the Regional Secretary, the Legal Bureau, and the Proposer.

IV. CONCLUSION

The process of lawmaking in Indonesia has been comprehensively investigated in this research, with an emphasis on the potential improvements and challenges associated with the current legislative procedures. The misalignment between the requirements of society and legislative objectives is one of the primary discoveries of this research. The absence of public participation in the formulation of laws and the excessive bureaucracy have resulted in a discrepancy between the policies that have been implemented and the expectations of society. This emphasises the necessity of changing the legislative mechanism to ensure that it is more adaptable to the changing dynamics of society and politics. Furthermore, the study underscores the significance of transparency and public participation throughout the entire legislative process. In practice, the National Legislation Program (*Prolegnas*) is frequently delayed or fails to address the most pertinent issues for the requirements of society, despite the fact that it offers guidance in establishing legislative priorities. Thus, this research makes a significant contribution by advocating for legislative reforms to guarantee that the lawmaking process is more inclusive, transparent, and efficient.

The practical implications of these findings demonstrate that it is imperative to enhance legislative procedures in order to achieve democratic governance and legal certainty. Regulations that are more precise, fair, and accepted by society will be the result of a more open legislative process that involves a broader range of stakeholders, including the public. This will bolster the legitimacy of the law and bolster public confidence in the government system. In conclusion, this research offers novel perspectives on how the current legislative process can be enhanced to more accurately reflect the demands of society and to promote equitable and prosperous governance. It is anticipated that the legislative process in Indonesia will be more effective in the development of regulations that are genuinely beneficial to the broader community as a result of the implementation of reforms to the lawmaking mechanism.

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