

Draft Regulations and Harmonization Synchronization Legislation on Executive Agencies

M Jeffri Arlinandes Chandra^{1,*} Purwaningdyah Murti Wahyuni¹ Yeni Santi¹

¹ *Lecturer in open university law studies, Open University of Indonesia, South Tangerang, Indonesia*

* *Corresponding author. Email: Jeffri.chandra@ecampus.ut.ac.id*

ABSTRACT

The concept of the legal state is often called the *Rechtsstaat*, the rule of law *oretat de droit* a country that promotes the concept of law as a cornerstone in doing an action taken by the state. Based on the rule of law in governance organized under the laws then in running a government should refer to laws - laws that guide the organization of a country which is based on the wishes of the people. The types of laws - laws contained in Act No. 12 of 2011 Concerning the Establishment of Legislation. Product legislation made by the executive branch, namely Law / Government Regulation in Lieu of Law; Government regulations; Presidential decree; Regulation of the Audit Board, Bank Indonesia, the Minister, body, agency, or commission equivalent established by Law or Government at the behest of the Act that everything should be harmonized and synchronization in order to form legislation that is good. The research method used in this study a combination of normative studies were supported by data - empirical data field research (field research). Synchronization and harmonization (preview) at the moment only be done in several draft laws - laws suppose the draft Act (Act) initiatives of the Government, a draft Government Regulation (PP) and a draft presidential decree (PERPRES) conducted by the Ministry of Law and Human Rights through the directorate general of legislation while legislative products of non-harmonized legislative bodies are still many such legislation in accordance with article 8, paragraph (1) Ruling bodies, agencies, ministries and others. So should all the products the legislation made by the executive branch and the legislature should be harmonized in advance that any legislation does not collide with one another.

Keywords: *Harmonisasi, synchronize, study, executive*

1. INTRODUCTION

The concept of the legal state is often called the *Rechtsstaat*, the rule of law *oretat de droit* a country that promotes the concept of law as a cornerstone in doing an action taken by the state [1], Indonesia as a state of law stated in Article 1 (3) of the 1945 Constitution which reads, "Indonesia is a country of law". The concept of the legal state is inseparable from the pillars themselves are understood rule of law. This understanding is the teaching which says that the supreme power is there no law or any other authority, except the law alone [2],

Traits - traits legal state According to Julius Sthall [3], The elements of a constitutional state (*rechtsstaat*) are:

1. Protection and recognition of human rights
2. State, based on the theory *potitica* triad;
3. Government organized under the laws (*wetmatig bestuur*); and
4. Their judicial state administration in charge of handling cases of unlawful acts by the government (*onrechtmatige overheiddaad*).

Based on the rule of law in governance organized under the laws then in running a government should refer to the

laws - laws that guide the organization of a country which is based on the wishes of the people. Constitution, which is in a state guidelines and then translated into laws - laws which are divided into several types of laws - laws contained in Law No. 12 of 2011 Concerning the Establishment of Legislation.

Based on Article 7 paragraph (1) of Act 12 of 2011, types and hierarchy of legislation formally *herarkis* is from the highest in a row was 1945, MPR, Law / Government Regulation in Lieu of Law (PERPU), Government Regulation (PP) Presidential Order (PERPRES), Provincial Regulation (Government) Regulations Regency. Based on Article 8, paragraph (1) of Act 12 of 2011, There are also laws - laws that are not included in the hierarchical but apply based ordered by legislation that is higher or formed under the authority of that is People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Board, the Judicial Commission, Bank Indonesia, the Minister, body, agency, or commission equivalent established by Act or on the orders of the Government Law Act, Provincial People's Representative Council, Governor, House of Representatives District / City, Regent / Mayor, the village head or the equivalent.

Legal product that was created by the legislature and the executive either jointly or indenpensi each institution in accordance with the level and types of legal products. The legislature (the government) has the function to make the rules and implementing development activities of the country. Ie legal product legislatureIn lieu of Law (PERPU), Government Regulation (PP) Presidential Order (PERPRES) and regulatory agencies / ministries made under delegated authority under the Act. Until now, the executive branch has established as many as 19 760 Regulations which consists of 192 substitutes Government Regulation Act - Act (PERPU), 4844 Government Regulation (PP), 1893 Presidential Decree (PERPRES), 12 831 Regulation (CANDY).

Perception of obesity legislation donated by the executive agency would need to be resolved in a mature and well-planned, namely through the establishment of harmonization and synchronization of legislation then periodic evaluation of the legislation which in practice are considered problematic. For example Overregulasi happened in Regulation and Regulatory Institutions / Departments become major issues in the implementation of the rule of law, causingmany regulations that overlap (overregulated)[4], Tumpeng regulatory overlap occurs due to the presence of egoisme sectoral (departmental), sehionnga lead to the absence of a shared understanding of the legislation as a system that discussion by representatives of the relevant agencies are not exhaustive but is fragmentary according to the interests of each institution, the representatives sent by the relevant agencies often changing and is not authorized to take a decision so that the opinion submitted inconsistent, depending on the individual assigned to represent, thus inhibiting the discussion, the draft legislation will be harmonized often recently distributed at meetings or newly learned during the meeting so that the opinion filed spontaneous and do not necessarily represent the views of agencies represented,Opinion boss who often motivated by their specific interests.

Laws and regulations that make a good harmony with other legislation. Disharmony a legislation with other legislation either at the same level and are at different tingakatan, will give rise to a complex problem. Therefore there needs to be a formulation in the formulation and evaluation of legislation which was formed at the level of executive agencies that the legislation that established a harmonious and synchronized.

2. FORMULATION OF THE PROBLEM

1. Is the formation of legislation in Indonesia has met the criteria for the establishment of legislation that good?
2. How the application Preview (Study) Draft Regulation Legislation And Review (Evaluation) Regulation Legislation By Executive Institute in Indonesia?

3. RESEARCH METHODS

The research method used in this study a combination of normative research were supported by data - empirical data field research (field research) that studies using information from the target or subject of study is usually called the informant or respondent through the instrument of data collection such as interviews later merge with the Data from the materials mainly related literature on legal matters[5] then search approaches that emphasize the norms contained in the provisions of legislation and legal theories that exist, and approach the concept (conceptual approach) which depart from the views and doctrines yangberkembang in the science of law.[6]

4. THEORY REVIEW

4.1.Types of Regulation Legislation in Indonesia

Types of laws - laws in Indonesia has been poured in the Act - Act No. 12 of 2011 concerning the establishment of laws - laws which set out in Article 7 and Article 8 of the Act - Act. The theory of the division of kind - the kind of regulation that isThree (3) groups: *wettelijk Regeling* (legislation), *beleidsregels* (Regulation of wisdom), and *beschikking* (Determination). Included in*wettelijk Regeling* (Legislation), such as the Constitution, Law, Government Regulation in Lieu of Law (PERPPU), Government Regulation (PP) Presidential Order (PERPRES), Regional Regulation (Perda), Village Regulations, and others. Including*beleid sregels* (Rule discretion), such as instructions, circulars, announcements and others. while including*beschikking* (Determination), such as decrees, and others - others[7], About what kind of legislation in Indonesia at this time, the reference is to Article 7 (1) and Article 8 (1) of Law 12/2011. Article 7 paragraph (1) regulate the types of laws - laws are:

- a) Constitution of the Republic of Indonesia Year 1945;
- b) People's Consultative Assembly Decree;
- c) Law / Government Regulation in Lieu of Law;
- d) Government regulations;
- e) Presidential decree;
- f) Provincial Regulation;
- g) Regulation of the Regency / City.

In addition to the type of legislation that is recognized by Article 7 (1), Article 8 (1) also set the type of legislation more include regulations set by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, the Supreme Court, the Court the Constitution, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, body, agency, or commission equivalent established by Law or Government at the behest of the Act, the Board of Representatives Provincial Governor, House of

Representatives District / city, Regent / Mayor, the village head or the equivalent.

4.2. The Principle of the Establishment Regulation Legislation good

In order to realize the establishment of written law, particularly legislation requires an orderly arrangement in the formation of legislation. Establishment of legislation is essentially a system, as it includes several events / stages are interwoven in a series inseparable from each other. These stages are planning, preparation stage, the stage of discussion, validation stage, the stage of the promulgation and dissemination phase.

The principles in the formation of rules is appropriate, namely: formal principles include: the principle of a clear purpose; the principle of organ / body right; perlunya principle arrangement; principles can be implemented; and the principle of consensus. While the principles of the material covers principles and systematics correct terminology; principles which can be identified; samadalam treatment principles of law; and the implementation of the principle of law according to individual circumstances[8], While A. Hamid S. Attamimi argued that the establishment of Indonesian legislation that should asasasas in sequence can be arranged as: Cita Indonesian Law; The principle of the State based on the rule of law and by the constitution; and other principles.

Principles of formation of Indonesian laws and regulations that should be followed the guidelines and guidance given by:

- a. Cita Indonesian law is none other than Pancasila (precepts in it act as Norma)
- b. Fundamental norms of other countries are also not Pancasila (precepts in it act as a norm)
- c. Other principles, namely:
 - a) Principles of State Based On the Law which puts Act as a means of typical settings are in the primacy of law.

The principles of the Rule of the Constitutional system that puts the Act as the basis and limits of the implementation of the activities of government.

4.3. Harmonization and Synchronization in Formation Legislation good

The formation process of law can basically be divided into three stages: stage ante legislative covering research, Filing initiative proposal, design, submission of the bill, the stage of legislative which includes discussion, determining the bill into law, Endorsement and earlier stage legislature include enactment, enforcement, enforcement Act.[9]

Indonesian legislation so far not been able to meet the legal needs of the community and have not been able to also anticipate the development of society in the future. The inability of the Indonesian laws can be seen from the

products of legislation that there is no validity in the time period long enough for the often modified and even replaced or repealed by legislation new.

It ought to be observed that in the future Indonesia legislation more accommodative and responsive to the state of today's society and future developments (ius constituendum). Products legislation which basically has happened disorientation of the formation it will make such regulations would be difficult to accept and will collide with the laws - laws that previously (disharmony). Solve problems disharmony there is need for a body that examines the harmonization of laws - laws that one with the other laws.

To get a legislation is good, then synchronize and harmonize not only done by adjusting and aligning the various terms and sentences in various legislations. Harmonization in the formation of legislation should also pay attention to the background and concept of thinking, as well as systems that affect the formation of such legislation. As an example, if a legislation that has a background and concept of thinking, and influenced by the system individualist, would be very difficult to be harmonized with the regulations imposed in the background, the concept of thinking and influenced by the family system.

5. RESULTS AND DISCUSSION

5.1. Formation of the legislation in the Executive Organization

To establish a legislation that either it must be consistent. Principles of formation of legislation is good according to IC van der Vlies in his book *Handboek Wetgeving* divided into two groups:[10]

Formal principles: 1) the principle of clear goals (beginsel van duidelijke doelstelling), ie, every establishment of legislation should have clear objectives and benefits for what it is made; 2) The principle of organ / body right (beginsel van het juiste Orgaan), namely any kind of legislation should be made by the institution or forming organs perundangundagan regulatory authorities; legislation may be reversed (vernietegbaar) or null and void (van rechtswege nieteg), when made by institutions or organs which are not authorized;

Pursuant to Article 7 paragraph (1) of the P3, the government (executive) has the authority to establish Law - Law (UU) / Government Regulation substitute Act (PERPPU), Government Regulation (PP) Presidential Order (PERPRES), Provincial Regulation (Government PROV) and City District Regulation (Perda KAB / CITY). Act - Act No. 12 of 2011 Concerning the Establishment Regulation Legislation lays in forming a legislation to go through the stages:

1. plan
2. making
3. Discussion

4. enactment
5. dissemination

All legislation must be through these stages. Suppose that in the formation of legislation which is a good government initiative at every level.

For The preparation of the bill can be done in two ways. First performed by the National Legislation Program initiative. Legislation based drafting of laws do not require permit approval to the initiative of the President. And second in certain circumstances, the initiative in drafting an outside Legislation can be done after the first request permission initiative to the President, along with an explanation of conception regulation bill that will be submitted. A description of the conception of the setting of the bill include:

- 1) Urgency and goal setting;
- 2) Targets to be realized;
- 3) Big Idea, scope, or the object to be regulated; and
- 4) Scope and direction of the setting.

The President of the letter was copied to the Vice President, the coordinating minister, the minister assigned to represent the President / Initiative, and the Minister. Government final opinion in the discussion of the bill in the House of Representatives delivered by Menhukham assigned to represent the President, after first reporting to the President.

While the preparation of government rules and regulations is coordinated by the minister president who held government affairs in the field of law. Draft Regulation comes from ministries / non-ministerial government agencies in their respective sectors. Planning and preparation of government regulation Presidential Regulation is done in a compilation program of Government and Presidential Regulation (PP Progsun and regulation).

In the formation of legislation the government's initiative the government has to coordinate with government agencies in charge of part of the ministry of legal affairs, namely the Ministry of Law and Human Rights, In accordance with Presidential Decree No. 24 of 2010 on the position, duties and functions of the state ministry is conducting its affairs in the legal and human rights in the administration to assist the President in running the state government. Director General of Legislation is a section under the Ministry of Justice and Human Rights has the duty and function that is[11]:

Formulate and implement policies and technical standardization in the field of legislation. The function of policy formulation and standardization are:

1. Preparation Department's policy formulation in the field of legislation;
2. Implementation of policies in the field of legislation in accordance with applicable regulations;
3. Formulation of standards, norms, guidelines, criteria and procedures in the field of legislation;
4. Providing technical guidance and evaluation;
5. Implementation of administrative affairs to all elements within the Directorate General of designing, pengharmonisasian, monitoring and evaluation of the

development and establishment of laws and regulations;

6. Publishing and publication design, process and results of the draft legislation and support materials designed legislation.

As Subkoordinasi in the ministry of law and human rights law is assisted by the directorate general of human rights and which has a function in accordance with the Ministerial Regulation No. M.HH-05.OT.01.01 The year 2010 confirmed that the Directorate General for Legislation performs functions[12]:

1. Design Legislation;
2. Pengharmonisasian Legislation;
3. Enactment, publication, Cooperation Legislation;
4. Legislation Litigation;
5. The design facilitates regional regulation;
6. Promotion and development of Functional designer;
7. The administration of the Directorate General of Legislation.

Thus the Ministry of Justice in this case the Director General of legislation has an important role in the formation of legislation that is good and principles that can be controlled through the harmonization and rounding off so that the friction between the government institutional sector menjaid reduced and do not overlap.

5.2.Implementation Preview (Study) Draft Regulation Legislation and Review (Evaluation)

Regulation Legislation By Executive Institute in Indonesia

Executive Preview (periodic review) is the term used by legal experts to refer to the authority of officials or administrative bodies state to conduct surveillance prior to the establishment of law and after formation / right test (toetsingsrecht) against the legislation, which has been done the harmonization and rounding the relevant ministries, while the Executive Review is a government's actions in looking back whether the legislation has effectively established or may constrain policy will be taken.

A review of the legislation in Law 12/11 can be described that rely on a process called harmonization and rounding the concept of the formation in order terentuklah legislation is good and consistent in the end.

Harmonization can be described that "comes from the word" harmony ", which means harmony, conformity, accord[13], In Big Indonesian Dictionary (2005) defined the quest for harmony. However, in the Collins Cobuild Dictionary to find the words harmonious and Harmonize with the following explanation[14]:

1. *A relationship, agreement etc. that is harmonious is friendly and peaceful.*
2. *Things are harmonious roomates roomates have parts make up an attractive whole and the which are in proper proportion to each other.*

3. *When people Harmonize, they agree about issues or subjects in a friendly, peaceful ways; suitable, reconcile.*
4. *If you Harmonize two or more things, they fit in with each other is part of a system, society, etc.*

Harmonisasi law by Moh. Hasan Wargakusuma[14] namely "Harmonization of law is a scientific activity towards processes pengharmonisasian written law refers both philosophical values, sociological, economic and juridical. In practice, harmonization is a comprehensive assessment to a draft legislation, in order to determine whether the draft regulation, in various aspects, have reflected the harmony or conformity with the regulations of national legislation other, with unwritten laws that live in community, or by conventions and international agreements, both bilateral and multilateral, which has been ratified by the government. ", while according to Maria Farida Indrati Soeprapto definition of" harmonization "in the formation of legislation is[15]: "An attempt or an activity to align (make harmony), and adjust (make appropriate) between a legislation with legislation other, either parallel (horizontal) or is hierarchical (vertical).

Function harmonization of laws - laws is a function that is crucial in the formation of laws - laws, so that the formation of laws - laws are effective and do not overlap then the need for harmonization in the formation of laws - the invitation.

The elements that can be drawn from the formulation of the notion of harmonization, among others: (a) the existence of conflicting things, clumsiness; (B) harmonize conflicting things in proportion in order to form a system; (C) a process or an attempt to realize the harmony, conformity, harmony, conformity, and balance; (D) the cooperation between the various factors such a way that these factors produce a unified whole.

Harmonization undertaken by Kemenkumham that is limited in terms of legal products Draft - Law, the Draft Regulation and Draft Regulations Draft Regulation whereas President, Regulatory Agencies and the Draft Regulations Provincial and Regency / City.

Limitations harmonization peraturan law - laws, which resulted in non hamonisasian between laws - laws that one with laws - laws more so it needs full control over the laws - laws in a special agency responsible for the synchronization and harmonization of legislation when will be formed.

Development of legal materials (legal substances) or legislation in Indonesia up to now continue, because the legislation is one of the major joints of the national legal system. Yet they still found the legislation "problematic", either because of substance, processes and procedures, as well as legal aspects of drafting. According to Ahmad M. Ramli, there are at least three (3) main problems in this field, namely[14]:

- a) Overlapping and inconsistent laws and regulations;
- b) Formulation of legislation that is less obvious; and
- c) Implementation of the legislation implementing regulations hampered.

The above problems, among others, due to the process of establishing legislation that ignores the importance of

deepening of the material, coordination, synchronization and harmonization with other legislation. Therefore, one of the priorities that must be carried out in the framework of the development of the national law is to harmonize legislation. Harmonization is done systemically early on that since the time of academic papers (NA), the preparation of the National Legislation Program (prolegnas) up to the drafting of laws.

Review concepts in the legislation which is the domain creation by the government must be controlled so that there is mehadirkan a legislation that is good and consistent. Concept *executive review* virtually unknown in Indonesia dikarekan review in Indonesia only put emphasis in maknisme objections filed to the institution for the settlement of disputes as yukatif that legislation under the Act are deemed contrary to the law, it can be submitted to the Supreme Court Judicial Review, while if there is a presumption of a Law Act contrary to the Constitution (UUD 1945), it can be submitted for judicial review to the Constitutional Court.

It should dibenah hereby undertake legal teronbosan in evaluating legislation is made from the Law until Regulation Regency / City resulting in the manufacture of Act as *ius constitutum* (Positive Law) would want the law to be *ius constituendum* (dicita- aspire law) is expected to be lasting and enduring, the indicator shows the laws established a law desired by the community.

As an executive agency whose primary task is the executor and the forming of legislation in accordance with the Law on P3 because so far there is not a concept that fits in evaluating the legislation. The author argues that the need for periodic evaluation mechanism (Scheduled culling) and the time of the imposition of an Act - Act (Sunset Regulations) that is certainly the executive branch has the responsibility to evaluate Laws - Law have been made. This has been done by the State of Australia in the evaluation of legislation in the State.

6. CONCLUSION

1. Pursuant to Article 7 paragraph (1) of the P3, the government (executive) has the authority to establish Law - Law (UU) / Government Regulation substitute Act (PERPPU), Government Regulation (PP) Presidential Order (PERPRES), Provincial Regulation (Government PROV) and City District Regulation (Perda KAB / CITY). Act - Act No. 12 of 2011 Concerning the Establishment Regulation Legislation lays in forming a legislation to go through the stages:
 - 1) plan
 - 2) making
 - 3) Discussion
 - 4) enactment
 - 5) dissemination
2. Need for strengthening preventive against the formation of a good legislation to the evaluation pattern tiered governance and coordination with the institutions - institutions relating to the establishment

of laws - laws so that no number of the lawsuit through a judicial review to the Supreme Court and the Constitutional Court and then need Adaiah the establishment of regulatory reform in the executive branch in the periodic evaluation mechanism (Scheduled culling) and the time of the imposition of an Act - Act (Sunset regulations) that is certainly the executive branch has the responsibility to evaluate the legislation that has been made.

REFERENCES

- [1] T. Azhary, *Negara Hukum*. Jakarta: Kencana, 2010.
- [2] S. Malian, *Gagasan Perlunya Konstitusi Baru Pengganti UUD 1945*. Yogyakarta: FH UII Press, 2001.
- [3] Aristoteles, *Politik*. Yogyakarta: Bentang Budaya, 2004.
- [4] N. A. Rizki, "Seskab: Obesitas Regulasi di Indonesia Sering Tumpang-Tindih," *detiknews*, 28-Nov-2018.
- [5] S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif*. Jakarta: PT Raja Grafindo Persada, 2012.
- [6] Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2010.
- [7] B. D. Anggono, "Tertib Jenis, Hierarki, dan Materi Muatan Peraturan Perundang - Undangan : Permasalahan dan solusinya," *J. Masal. - Masal. Huk.*, vol. 47, no. 1, pp. 1-9, 2018.
- [8] M. F. I. Soeprapto, *Ilmu Perundang-undangan*. Yogyakarta: Kanisius, 1998.
- [9] J. Rizal, "Sosiologi Perundang-undangan," in *Pendidikan dan Latihan Tenaga Tehnis Perundang-undangan Sekretariat Jenderal DPR RI*.
- [10] S. A. Hamid, "Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara," 1990.
- [11] Kemenkumham, "Struktur DJPP," *Kemenkumham*. [Online]. Available: <http://www.djpp.kemenkumham.go.id/struktur-djpp/ditjen-pp.html>.
- [12] Kemenkumham, "Tentang Umum," *Kemenkumham*. [Online]. Available: <http://ditjenpp.kemenkumham.go.id/31-tentang/umum.html?type=rss&start=10>.
- [13] M. D. al Barry, *Kamus Modern Bahasa Indonesia*. Yogyakarta: Arkola, 1995.
- [14] A. M. Ramli, "Majalah Hukum Nasional; Koordinasi dan Harmonisasi Peraturan Perundang-undangan," *BPHN*, Jakarta, p. 4, 2008.
- [15] M. F. I. Soprapto, "Meningkatkan Kualitas Peraturan Perundang-undangan Di Indonesia," 2009. [Online]. Available: <http://www.legalitas.org/?q=node/216>.