



Analysis of Position, Function and Load Material Regulations of the Rector and Senate Regulation Based on Law Number 12 Year 2011 Concerning Establishment of Legislation

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Abstract. The 1945 Constitution of the Republic of Indonesia has been amended 4 (four) times, but still contains juridical problems in it. The problem that most often occurs is related to the overlapping of existing rules. Law No. 12 of 2011 concerning the Establishment of Legislation as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation as a guideline for the formation of existing legislation in Indonesia. Rector's Regulations and Senate Regulations as one of the laws and regulations outside the hierarchy of Legislations whose existence is recognized within the scope of universities. This research is structured to describe situational, conditional analysis, philosophical, sociological and juridical foundations, position, function and scope, direction of regulation and scope of material for the Rector's Regulations and Senate Regulations at the State University of Surabaya. This research is intended to ensure the consistency and harmony of norms at various levels of legislation in the State University of Surabaya. The method used in writing this research is a normative legal research method, namely an assessment based on legal philosophy, legal theories, legal principles, and applicable legal norms. This study uses a normative juridical approach and an empirical juridical approach. The output of this research is in the form of scientific articles published in international journals or proceedings of international seminars.

Keywords: Hierarchy · Chancellor's Regulations · Senate Regulations

1 Introduction

In legislation, there is a hierarchy theory. Hierarchy theory is a theory which states that the legal system is arranged in stages and levels like stairs. The relationship between the norms that govern the actions of other norms and other norms is referred to as the super-relationship and subordination in the spatial context. The norms that determine the actions of other norms are superior, while the norms that carry out the actions are called inferior norms [1]. Therefore, the actions carried out by higher norms (superior) are the reason for the validity of the entire legal system that forms a single unit [2].

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S. Setiawan et al. (Eds.): IJCAH 2022, ASSEHR 724, pp. 1576–1583, 2023.

https://doi.org/10.2991/978-2-38476-008-4_170

In Indonesia, this chain of legal norms is actualized into the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning the Establishment of Legislations (Law No. 12 of 2011). Article 7 paragraph (1) of Law no. 12 of 2011 mentions the types and hierarchy of laws and regulations in Indonesia, namely:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations;
7. Regency/City Regional Regulations.

Furthermore, Article 7 paragraph (2) of Law no. 12 of 2011 stipulates that the legal force of laws and regulations is in accordance with the hierarchy as stipulated in Article 7 paragraph (1). This means that the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is used as the basic norm according to Kelsen or the basic state rules (Staatsgrundgesetz) as Nawiasky views. Therefore, the consequences are: first, the 1945 Constitution of the Republic of Indonesia overrides all lower regulations (the principle of *lex superiori derogat legi inferiori* applies) and secondly, the material content of the 1945 Constitution of the Republic of Indonesia becomes the source in the formation of all legislation, so that the MPR Decree until the District/City Regional Regulations may not conflict with the 1945 Constitution of the Republic of Indonesia. According to Ni'matul Huda, if the lower laws and regulations conflict with those above, then the regulation can be sued for cancellation or null and void (*van rechtswegenietig*).

Law number 12 of 2011 has included juridical principles in the formation of laws and regulations in Indonesia, but still raises juridical problems in its application. First, Law Number 12 of 2011 restores the position of the MPR Decrees in the rules of legislation [3]. In Fact, in Law Number 10 of 2004 concerning the Establishment of Legislation (Law Number 10 of 2004), the position of the MPR Decree has been abolished in the hierarchy of laws and regulations in Indonesia. This then raises new problems because with the MPR Decree in the hierarchy of laws and regulation, constitutionally, the MPR Decree cannot be tested through a judicial review system, either through the Constitutional Court (MK) or the Supreme Court (MA). This means that if there is material in the MPR Decree that is contrary to the 1945 Constitution of the Republic of Indonesia or violates the constitutional rights of citizens, both potentially and factually, the settlement mechanism will be very difficult. Second, the existence of a Presidential Regulation (Perpres) whose material content is almost the same as a Government Regulation and is considered to have an uncertain material content, so that it has the potential to be used by the president to abuse power [4]. Third, in Law Number 12 of 2011 it is also known that there are other types of legislation outside the hierarchy as stipulated in Article 7 paragraph (1). Other regulation include the Regulations of the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD), the Supreme Court (MA), the Constitutional Court (MK), the Supreme Audit Agency (BPK), the Judicial Commission (KY), Bank Indonesia (BI), the Minister, agency or institution of the same level established by law or by the government by order of law. Provincial DPRD, Governor, Regency/Municipal DPRD, Regent/Mayor,

Village Head or the equivalent are included in this case. Rector's Regulations and Senate Regulations issued by Universities as referred to in Article 8 paragraph (1) of Law no. 12 of 2011 concerning the Establishment of Legislation. This creates confusion (discourse) regarding the position of these other laws and regulations in the hierarchy [5]. In their application, regulations at the level of ministerial regulations can override regional regulations [6].

1.1 Research Problems

Based on the above background, the problems regarding the preparation of this research are as follows:

1. What is the position of the Chancellor's Regulations and Senate Regulations in the Indonesian legal system after the enactment of Law Number 12 of 2011?
2. What is the function of the Chancellor's Regulations and Senate Regulations?
3. What is the content of the Chancellor's Regulations and Senate Regulations?

2 Study Reference

This study includes previous research journals related to the position of the Chancellor's Regulation or Rector's Decree. Previous research serves as an analysis and provides views on the research discussion, and distinguishes it from the current research. These journals include [7]:

- a. The position of the Chancellor of a Private Higher Education as a State Administration Agency or Official. Taken from the Indonesian Islamic University Thesis Journal, researched by Asasiputuh, S.H. Year 2017 which has legal problems related to differences of opinion of judges in placing the Chancellor of Private Higher Education as or not as a State Administration Agency or Official. To answer these problems, this research will examine the subject matter through a juridical-normative approach. Based on the results of this study, it can be concluded that in practice there are differences in the judge's considerations in placing the Chancellor of Private Higher Education not as a State Administration Agency. The legal considerations taken by the judge stated that the Chancellor of a Private Higher Education with Lecturers and/or others within the Private University is an employment relationship, such as between Employers and Job Seekers, Employers and Employees.
- b. Legislation theory can emerge from the legal process in the flow of legal positivism that developed in Europe. The purpose of the establishment of laws and regulations is to provide clarity and legal certainty to the state administration process in all aspects.

Legislation theory can emerge from the legal process in the flow of legal positivism that developed in Europe. The purpose of the establishment of laws and regulations is to provide clarity and legal certainty to the state administration process in all aspects.

The definition of legislation has been regulated in Article 1 point 2 of Law Number 12 of 2011 concerning the Establishment of Legislations (hereinafter referred to as

Law 12/2011), “Laws are written regulations that contain legally binding norms. General and established or determined by state institutions or authorized officials through the procedures stipulated in the Legislative Regulations.”

3 Methods

This research uses a normative legal research method approach, namely an assessment based on legal philosophy, legal theories, legal principles and applicable legal norms. This research also uses normative juridical, empirical juridical, quantitative, and comparative approaches [8].

Researchers use quantitative and comparative because the problems are dynamic, unclear and full of meaning so that it is impossible for data on social situations to be captured by qualitative methods with instruments such as questionnaires [9]. The quantitative and comparative approach aims to describe broadly and in depth various conditions and situations that arise in society, especially in the area of the State University of Surabaya where the object of research is. While the comparative approach aims to compare with other state universities by analyzing the advantages and disadvantages of each legal product between Surabaya State University and other state universities that are used as comparisons. Another consideration in using comparative research is as a benchmark for the material content of laws and regulations, namely the Chancellor’s Regulation and Senate Regulations so that a draft is structured systematically or thoroughly and systematically.

Sugiyono [8] think that there are 4 data collection techniques in qualitative research which are carried out including observation, interviews, documentation and a combination of the three. In this study, the data collection techniques used were Focus Group Discussion, interviews and empirical. This is done in order to obtain complete information related to the Analysis of Position, Function, and Content of the Rector’s Regulations and Senate Regulations Based on Law Number 12 of 2011 concerning the Establishment of Legislations.

1. Focus Group Discussion (FGD) between research members. This technique is used to obtain basic data on laws and regulations that are still in effect regarding the accuracy of competence and material in the content of the discussion.
2. Interview. The interview method used in this research is an in-depth interview, namely by extracting information in depth, openly, and free of problems and research focus. Selected informants who have competence in the field of Constitutional Law or Governance Law.
3. Empirical Empirical research is a research method conducted using empirical evidence. This empirical evidence is information obtained through observation or experimentation. The empirical evidence is by recording and analyzing the data, then this empirical evidence is collected using both quantitative and qualitative research methods. According to the Big Indonesian Dictionary (KBBI), empirical is something based on experience, especially experience gained through discovery, experimentation or observation. Thus, empirical research can be interpreted as social science, which is a group of sciences that focus on researching human behavior and the

environment. However, it is different from natural science or science that examines nature and its symptoms. Some opinions of experts regarding the meaning of empirical research: According to Amiruddin and Zainal Asikin, empirical research focuses on examining a phenomenon or state of the object of research in detail by collecting the facts that occur and developing existing concepts. Yesmil Anwar and Adang said that empirical research is a science based on common sense, not speculative and based on observations of reality. According to Hilman Hadikusuma, empirical research is research that is exploring (exploratory), describing (descriptive), and explaining (explanatory).

4 Result and Discussion

Until now the research has been carried out by means of Focus Group Discussion (FGD) between research members. In this discussion discusses the laws and regulations that are still in effect regarding the accuracy of competence and material in the content of the discussion. Interviews with researchers from Brawijaya University, namely the Administrative Law section and several experts in the field of Constitutional Law and Governance Law.

Universitas Brawijaya was chosen for a comparative study because it is one of the Universities that has a Legal Entity and is also the closest to conducting research. This discussion is especially in the same section, namely the Law of Governance.

The discussion discussion is that there are differences between universities that are still in the status of Public Service Agency (PTN-BLU) and Legal Entities (PTN-BH), especially in the administrative law section. In PTN-BLU the Rector's Regulations and Senate Regulations are hierarchically the same, however, in PTN-BH the Rector's Regulations have a higher position than the Senate Regulations.

Then the material content between the Rector's Regulation and the Senate Regulation is also different, namely; This Rector's Regulation contains material on all academic matters and the Senate Regulations here on all non-academic matters.

There are also differences in the scope, namely; This Rector's Regulation is aimed at the academic community around the university while the Senate Regulation is only for the senate itself.

The research so far has been carried out by means of Focus Group Discussions (FGD) between research members and resource persons from the State University of Surabaya themselves who are considered competent in their fields and interviews with resource persons from Universitas Brawijaya.

In this discussion, we discuss the applicable laws and regulations or what is known as positive law relating to the accuracy of competence. And material in the discussion content of interviews with informants from the Department of Law and Administration, Universitas Brawijaya and several experts in the field of Constitutional Law and Governance Law.

It should be noted that Universitas Brawijaya is one of the State Universities of Legal Entities (PTN-BH), so that the legal products that have been produced can be used as comparative data in this study.

The following is the legal basis and legal products of Universitas Brawijaya:

1. The legal basis of PTN-BH Universitas Brawijaya is Government Regulation Number 108 of 2021 concerning State Universities as Legal Entities of Universitas Brawijaya.
2. Legal products from PTN-BH Universitas Brawijaya, namely the Rector's Regulation of Universitas Brawijaya Number 31 of 2021 concerning Personnel.

The meeting held by the Research Team with the Universitas Brawijaya, got a lot of input related to the existing problems. That from State Universities of Public Service Agencies (PTN-BLU) to State Universities of Legal Entities (PTN-BH) requires a strong and structured foundation of legal products, so that if there is a legal problem, it is easy to find a solution. State Universities that are legal entities have a transition period of 2 (two) years in implementation since the issuance of a Government Regulation. This means that there is still time in preparing everything to actually implement or implement a legal entity university.

Before going any further, the Research Team will explain a little about the meaning of PTN-BH. Legal Entity State Universities (PTN-BH) are state universities established by the government with the status of an autonomous public legal entity, meaning that these PTN-BH have full autonomy in managing household budgets and finances. To increase income from all sides, one of them is making superior products made by the university itself. Universitas Brawijaya makes superior products, one of which is local fruit chips.

5 Conclusion

After conducting a comparative study with informants from the Department of Law and Administration and Focused Group Discussions between research members, it can be concluded that the research results obtained are based on normative and comparative juridical methods. The conclusions obtained include the differences between State Universities of Public Service Agencies and State Universities of Legal Entities.

Differences in the Position of Rector's Regulations and Senate Regulations Based on Public Service Agency State Universities (PTN-BLU) and Legal Entity State Universities (PTN-BH).

Rector's Regulations and Senate Regulations Based on PTN-BLU.

1. Based on the position, the Chancellor's Regulations and the Senate Regulations are the same or equal. This means that these two regulations both have the authority to make or issue regulations.
2. Based on Absolute Competence, the Rector Regulation as referred to in the Unesa Statute Article 33 paragraph (1) is the organ that carries out the function of determining non-academic policies and Unesa management for and on behalf of the Minister while the Senate Regulations as referred to in the Unesa Statute Article 30 paragraph (1) is an organ that carries out the function of determining and considering the implementation of academic policies.

3. Based on the Relative Competence, the Chancellor's Regulations and the Senate Regulations are equally valid in the university environment, which consists of the Academic Civitas and the Educational Personnel.

Rector's Regulations and Senate Regulations Based on PTN-BH:

1. Based on the position, the Chancellor's Regulations and the Senate Regulations are not the same. The Chancellor's Rules have a higher position than the Senate Rules.
2. Based on Absolute Competence, the Rector's Regulation as intended
3. Based on Relative Competence, the Chancellor's Regulations apply more broadly than the Senate Rules. The Chancellor's Regulation applies within the University environment while the Senate Regulation only applies to the Internal Senate.

6 Suggestion

Suggestions that can be in this research are:

1. It is hoped that sufficient time will be available for the implementation of this research and the preparation of the final report.
2. More in comparative studies with universities that have PTN-BH in order to obtain materials for the preparation of both the Chancellor's Regulations and Senate Regulations and others.
3. In the preparation of the Chancellor's Regulations and the Senate Regulations, it is necessary to involve people who are competent in the legal field so that the references obtained are more complete.

Acknowledgment. The author would like to thank to Research and Community Service Institute of Universitas Negeri Surabaya and my colleagues who have support resources for this article.

Authors' Contributions. All authors (LA, YWN, MAF and KK) contributed writing, correcting, editing, read and approved the final manuscript.

References

1. Ashidiqie, Jimly. 2010. *Regarding the Law*. Jakarta: Raja Grafindo Press.
2. Farida, Maria. 2008. *Compedium Report on Legislation, Ministry of Law and Human Rights of the Republic of Indonesia National Legal Development Agency*. Jakarta: Center for Research and Development of the National Legal System.
3. H. Zainal Asikin, Amiruddin. 2013. *Introduction to Legal Research Methods*. Surabaya: Rajawali Press.
4. Meleong, L. J. 2014. *Qualitative Research Methodology*. Bandung: Youth Rosda Karya.
5. Manan, Share. 1987. *The role of legislation in the development of national law*. Bandung: Armico.

6. Yesmil, Anwar Adang 2008. *Introduction to the Sociology of Law*. Jakarta : Grasido.
7. Hadikusuma, Hilman 2013. *Methods of Making Working Papers or Legal Thesis*. Bandung: Mandar Maju.
8. Sugiyono. 2011. *Educational Research Methods: Quantitative, Qualitative And R&D*. Bandung: Alfabeta.
9. Arikunto, Suharsimi 2013. *Research Procedure A Practical Approach*. Surakarta : Rineka Cipta.

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