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Law-Making Power In Indonesia: Beyond General Practices Or Uniqueness Of Constitutional System?

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Abstract

The need for a statutory regulation is one of the absolute requirements in the life of the state. The high need for these regulations is directly proportional to the expansion of the government's work area which of course requires a series of authorities to realize the goals that have been set. The same thing also happened in Indonesia, which was formed on the foundation of a state based on law with all its characteristics by stipulating the division of authority as stipulated in the constitution, including the authority in the field of law-making. This study aims to illustrate that the authority to form laws in Indonesia has a unique characteristic but on the other hand, it is also a picture that is contrary to the general practice adopted by many legal systems in other countries.

Keywords: Law-Making, Power and Authority, Constitutional System.

INTRODUCTION

In the era of democracy, reform of national law is needed to establish laws and regulations that regulate all levels of life.[1] The authority in the formation of laws is a form of response from the community as required by the conditions at that time.[2] Law-making is part of the ordering activity of society, and it consists of a combination of human individuals of all dimensions.[3] The selection of topics about the formation of laws in certain constitutional systems is based on simple investigations, such as the basics of our law. Law has another function as a social order, so the concepts offered are based on the existing goals and of course between one context and another context will vary.[4] This view will be relevant if it is connected with the context of the modern state conception that is widely adopted today. Departing from the reason to improve the quality in all lines of the life of a large society and national format requires a firm, clear and definite need. The authority is then handed over to the government and the burden of managing all aspects of state life within a few decades. Of course, this will be difficult to accept by society as a whole.[5] So that the creation of laws often changes through the Perppu route taking into account the community's need for legal certainty.[6]

According to the concept of power, powers in Indonesia's national administrative system are divided into three main bodies: executive, legislative and judicial. The executive branch includes the president and vice president, ministers appointed and appointed by the president, and other heads of government agencies. The legislative branch is known as the MPR and MPR, while the judicial branch is the Supreme Court and the Constitutional Court. This division of power often makes it difficult to formulate laws as a form of communication between the institutions that establish a power of authority and the people of a country.[7]

An explanation of the separation of powers was given above, followed by a presidential system governed by national ideals, in accordance with the provisions of the first paragraph (3) of the 1945 Fourth Amendment Constitution of the Republic of Indonesia. The legislature has this power when applying law from a constitutional perspective. In relation to Indonesia’s original form of state administration, the establishment of a legal domain in Indonesia represents a unique situation that contradicts the prevailing practices of most constitutional institutions.[8]To that end, it is important to conduct research to get a complete picture of Indonesian laws and regulations in terms of both history, regulation and implementation. The results of the exposure in the study are described neutrally without constructive and destructive criticism. Although practices in Indonesia go against theoretical understanding or exceed generally accepted practices.

LITERATURE REVIEW

As a country based on law as stated in the provisions of Article 1 paragraph (3) Article 1 paragraph (3) The 1945 Constitution of the Republic of Indonesia 4th. The amendments have resulted in consequences if the Indonesian state in the context of implementing state activities has characteristics that are in line with the existing conception of the rule of law and in essence is obliged to provide protection for human rights, recognize and implement the separation or division of power, sovereignty rests with the people, and administrative justice. state and the administration of government is based on the applicable laws and regulations.[9]

In addition to the above characteristics, the rule of law adopted in Indonesia is rooted in the original traditions of the Indonesian state. The national paradigm is formulated through the full integration of her five principles of nationhood outlined in the Indonesian National Ideology: Divinity, Humanity, Nationality, Democracy and Social Justice. The Five Principles of Pancasila contain universal values, but are also characterized by Indonesian national traditions. The dimensions of universality and particularity have led to the introduction into Pancasila of the notion that the founders of the Indonesian nation wanted to establish a modern nation, but still led to the values that grew and developed in the original traditions of the Indonesian people.[10]

The combination of Western conceptions of the rule of law and the traditions developed in Indonesian society has made Indonesia a rule of law with unmistakable characteristics, relevant to the realization of the goal of establishing an Indonesian state outlined in the preamble. was 4th Amendment to the Constitution of the Republic of Indonesia, 1945. (1) to protect the Indonesian people and the Indonesian mainland as a whole; (2) to promote the common good; (3) to educate the lives of the people; To participate in the realization of a world order based on justice.

Therefore, to realize this goal, it is an absolute thing as well as a logical consequence of practising the conception of the state based on

law if the management of state life must be based on the provisions of laws and regulations. About statutory regulations, apart from the material aspect (substance) of the various existing regulations, another thing that is important to understand is the authority in their formation.

Normative provisions are stipulated in the Indonesian Constitution as well as Article 1 (1) and (2) of Law No. 15 Year 2019 on Amendment to Law No. 12 Year 2011. The enactment of a statute means the enactment of a decree, including the stages of planning, drafting, deliberation, ratification or decision, and promulgation. Statutory regulations are written rules that generally establish legally binding norms and are formed by state bodies or agencies through procedures specified in laws and regulations.

RESEARCH METHOD

The data collection in this study focuses on the process of finding the rule of law, legal principles, and jurisprudence through legal, historical, and conceptual approaches, specifically to solve legal issues related to the formation of Indonesian law.[11] Data collection in this study was conducted through documentation studies and literature studies. Furthermore, qualitative analysis using interpretation (interpretation) of legal materials that have been processed, especially on primary legal materials to verify whether there is a norm, norm antinomy, and obscurity to the norm.

In addition, data collection was also carried out by collecting secondary data from various kinds of literature and laws and regulations related to the research topic.[12] Furthermore, the data obtained are classified into three legal materials, namely:

1. The primary legal material is the authoritative legal material, in which case all applicable laws and regulations in Indonesia related to the research topic include:
   a. Fourth Amendment to the Constitution of the Republic of Indonesia, 1945 (The State Constitution Amendment to the -IV of the Republic of Indonesia).
   b. Republic of Indonesia Law No. 12 on Legislation.
   c. Republic of Indonesia Law No. 15 Year 2019 Amending Law No. 12 on Legislation.
2. Secondary legal material is legal material that supports and enhances primary legal material, such as literature or academic papers on a research subject.
3. Tertiary legal material, i.e. all kinds of material intended to provide instructions and explanations for primary and secondary legal material.

RESULT AND DISCUSSION

Law-Making Power in Indonesia Legal System

We have seen in the previous section that the legal system that applies in Indonesia is formed in harmony and the same breath with the ideology of the Indonesian nation, namely Pancasila. In the most basic understanding, Pancasila is a perspective and philosophy of life for the State. Pancasila is still considered partial because it does not see the development of national law as an integral part.[13] Thus, the nation's founding fathers established the Republic of Indonesia as a constitutional and God-based democracy, civilized, protecting human rights and social justice.[14]

The Indonesian rule of law is based on Pancasila, which contains definitions and

standards. (2) Application of the principle of separation of powers and limitation of powers based on the national administrative system as stipulated in the Constitution. (3) there is a constitutional guarantee for the protection and realization of human rights; (4) the existence of an independent and impartial legal principle; (5) Equality for all legal citizens is guaranteed. (6) Ensure justice for all, including against abuse of power by public authorities; Based on Pancasila's idea of a constitutional state, it can be said that, in a constitutional understanding, the law has the supreme commanding power in the administration of the state. Therefore, Indonesian law and jurisprudence must refer to and rely on these legal ideals.[15]

Making laws guide the life of the nation has a linear effect on all authorities with which the government must enforce the provisions contained in applicable laws and regulations. This perception is at least in line with what was conveyed by Thomas Paine (in Hilaire Barnett) which states that the constitution is not a rule set by the government but the people's agreement to regulate the government. Therefore, a government that is not guided by the content of the constitution is an illegitimate power.[16]

Based on the system of laws and regulations in Indonesia, the Constitution is the supreme law, followed by MPR Decrees, laws or government regulations instead of laws, Government Regulations, Presidential Regulations, and Regional Regulations. However, the constitution is certainly not everything. The constitution is not everything because the constitution does not at the same time contain the notion of constitutionalism.[17] The hierarchy is regulated by the provisions of Article 7 Law of the Republic of Indonesia Number 12 on Legislation Making (This research will only focus on the authority to form laws). Furthermore, with regard to the authority to form laws in the State of Indonesia, it has undergone an evolution and change from its original arrangement (the first constitution). The first period refers to the provisions contained in The 1945 Constitution of the Republic of Indonesia [The 1945 Constitution which was valid from 18 August 1945 to 27 December 1949 was then re-enacted on 5 July 1959 to 13 October 1999 (first constitution)], the authority to make laws rests with the executive, in this case, is the President. The provision is regulated in Article 5 paragraph (1) which reads "The President holds the power to make laws with the approval of the House of Representatives", then in the provisions of Article 20 paragraph (1) says "every law requires the approval of the House of Representatives"

In addition to the two articles above, which depend on the authority to formulate laws, it is clearly stated that they are under the power of the president (executive institution) and the position of the DPR (legislative institution) is only given authority in terms of granting limited 'administrative' approval, but when compared with the provisions of Article 21 paragraph (1) which reads “Members of the House of Representatives have the right to advance draft laws”, the DPR's authority apart from being an administrative institution also proposes to propose draft laws.

The dominant constitutional era division is the 1949 Constitution of the Republic of Indonesia (RIS Constitution), which was in effect from 27 December 1949 to 17 August 1950, and the 1950 Interim Constitution of the Republic of Indonesia [Interim Basic Law (UUDS)], valid from 17 August 1950 to 5 July 1959). The period in which the two constitutions came into force saw major changes in the state administrative system, including the transition of the states to a federal republic and the transition from a system

of government to a parliamentary system. The states and governments were organized under the leadership of the prime minister, and the legislature consisted of the House of Representatives and the House of Representatives. Senate. With regard to statutory powers, referring to the provisions of Article 127 of the RIS Constitution, it states: A collegial body of the House of Representatives and the Senate, which shall act to decide on specific matters affecting one, some or all of the Regions or their parts, or in particular the relations between the Republic of Indonesia and the Regions. do. (b) the Government, together with the House of Commons, in all areas of other regulation; "

The definition specified in Article 127 of the RIS Constitution above is regulated in detail in the provisions of Article 68 of the RIS Constitution which reads: "(1) The President and the Ministers together constitute the Government; (2) Wherever in this Constitution it is called the Government, then what is meant is the President with one or several or ministers, namely according to general dependents or dependents."

The next period was the enactment of the Provisional Constitution of 1950 [the Provisional Constitution (UUDS)], in which the authority to form laws as regulated in Article 89 of the UUDS which reads "The power of legislation, in accordance with the provisions of this section, is exercised by the Government together with the House of Representatives". Furthermore, in Article 90 paragraph (1) of the UUDS, the Government has the right to submit a draft law which is submitted to the DPR with the mandate of the President. Furthermore, in Article 90 paragraph (2) of the UUDS, it is determined that the DPR also has the right to submit a draft law and Article 91 of the UUDS states that the DPR has the right to make changes to the draft law proposed by the Government. Then in the provisions of Article 94 paragraph (3) stipulates that the authority to ratify laws rests with the government.

The last period still valid today was the passage of the 1945 Amendments to the 1945 Constitution of the Republic of Indonesia. The second revision was on 13 October 1999. Changed from 7 August to 18 August, 2000, her third change was made on 1 November 2001. It was changed on 9 November 2001 and changed a fourth time from 1 August to 11 August, 2011. Therefore, the current provincial constitution of Indonesia is known as the 4th Amendment to the 1945 Constitution [Republic of Indonesia Law]. Constitution of the Republic of Indonesia, 1945 (4th Amendment of the Constitution of the Republic of Indonesia, 1945)].

The era of enactment of The 1945 Constitution of The Republic of Indonesia 4th Amendment [Fourth Amendment to the 1945 Constitution of the Republic of Indonesia (IVth Amendment of the 1945 Constitution of the Republic of Indonesia)] in relation to the authority to form laws can be found for the first time through the provisions embedded in the Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "The President has the right to submit a draft law to the House of Representatives." Furthermore, additional formulations are placed in Chapter VII concerning the House of Representatives, specifically in Article 20 paragraph (1) which reads "The House of Representatives holds the power to form laws." Furthermore, Article 20 paragraph (2) contains "Every draft law is discussed by the House of Representatives and the President for mutual approval." If previously in the period of the 1945 Constitution (the first constitution) the DPR was given the authority as an 'administrative' institution, in this period of enactment of the 1945 Constitution of the Republic of Indonesia, that role was handed over to the President as regulated in Article 20 paragraph (4) which reads "The President ratifies the draft law which have been mutually agreed to become law."

Moreover, besides the DPR and the President, there is also a legislative power called the DPD, which states that it can submit bills to the DPR and participate in the debate of the bills, but only in that area. Those related to regional autonomy, central-regional relations, regional formation, expansion and merger, management of natural and other economic resources, central-regional financial balance, and central-regional financial balance. These provisions are contained in Section 22D (1) and (2) of Her 1945 Constitution of the Republic of Indonesia. There is also a provision that if the president does not ratify the passed law, the bill will come into force within 30 days. This provision is stipulated in Article 20(5) of the 1945 Constitution of the Republic of Indonesia.

Beyond the Limits or Uniqueness of the Constitutional System?

Before we give a clear description related to the phrase 'beyond the limit' and 'the uniqueness of the constitutional system' in the context of the formation of laws, we first summarize several important points from a normative point of view as previously explained, including, the authority to form laws and regulations. The law in the legislature, in this case, is the DPR, with additional provisions, the President can submit a draft law and the DPD can submit a draft law related to local government. In the case of a draft law, it is carried out jointly by the DPR/DPD and the President to obtain mutual agreement. In addition, the formation of laws must provide public space for the wider community.[18]

The construction of the formation of the law is described based on the provisions contained in the 1945 Constitution of the Republic of Indonesia, which substantially underwent extreme changes compared to the arrangements in the first constitution by some experts in constitutional law in Indonesia as natural. The legislative function should be in the legislature and not in other institutions, but there is also a view that the legislative function submitted to the DPR has also shown superiority over the legislative function of the DPD because the DPD only gets a 'allocate' of permission to submit and discuss draft laws. Constitution. This area is limited to regional autonomy, central and regional relations, regional formation and expansion and integration, management of natural and other economic resources, and issues of central and regional financial accounts and central and regional financial accounts. It has been. In simple terms, the legislature that adheres to a bicameral system should have a harmony of authority in the legislative function.[19]

Based on the opinion about the formation of the law above, it can still be debated as is the case in the dynamics of theoretical development, especially if it is applied to aspects of the state and government system, it will certainly produce results that will not stop. Therefore, this section will not contain theoretical differences that are subjective and final. We are of the view that the normative formulation as described previously will be placed as the final result. We will arrive at the difference at the time of the discussion as the 'antidote' to provide a complete description.

This is an abbreviation for the creation of laws, starting from where the 1945 Constitution still contains several weaknesses, including the amount of power that results in an imbalance between the legislative and judicial institutions. Therefore, it is absolutely necessary for a mechanism of checks and balances so that the power does not become arbitrary. This reason became the main point at the meeting of the first amendment to the Indonesian constitution.[20]

At least there is an empathetic view that develops in terms of 'the authority to make laws

rests with the President' whereas the first view expressly rejects or contradicts the wishes of those who were originally above the law. This view is based on the legislative authority already in the realm of the legislature, not in the realm of the executive. The second view places the authority to make laws jointly between the President and the DPR. This view is based on the reason that the President has the authority in his capacity as a government. Third, it states that the authority possessed by the President is not in making laws, but also the right to propose draft laws, and the fourth view states that the formation of laws remains under the approval of the President with the approval of the DPR based on arguments during the enactment of the 1945 Constitution. (the first constitution), the majority of the members of the legislature are from the same party as the President, as a result of which the developing political structure can be easily controlled by the President in his capacity as the leader of the political party itself.

Arguments The variety above is interested in the interest in enacting laws which in the end formed the current formulation, where the stipulation of laws is in the legislative realm but the President has the right to submit draft laws to the DPR. The stipulation of the formulation of the authority to form laws in the Indonesian constitution must be interpreted as a principle or principles that regulate the allocation and purpose of granting to the government, along with the rights that are governed which the two subjects adjust to each other.[21]

Through an explanation from the normative side and the official date of making the law, it can be seen which authority resides in the institution. However, are these formulations in accordance with their implementation at a practical level? To answer these questions, we prepared data for making laws along with the quantity of proposed bills, the origin of the proposing agency, and the draft laws that were approved into law. In this research, there are several submissions of data on the national legislation program since 2004 (after the enactment of the 1945 Constitution of the Republic of Indonesia and the first direct election) where the data comes from the report of the annual session of the legislative body (DPR), namely:

1. For the period 2004-2009, there were 335 draft laws made. 173 have been successfully passed with a proportion of 87 from the DPR and 86 from the Government.
2. For the period 2010-2014, there were 110 successful draft laws submitted with details. 73 from the DPR, 1 (one) from the DPD and 36 from the Government. As for those that have been successfully passed into law as many as 44 from the DPR, 1 (one) from the DPD and 27 from the Government.
3. For the 2015-2019 period, there were 172 draft laws consisting of 73 from the DPR, 67 from the Government and 32 from the DPD. As for those that have been successfully passed into law as many as 17 with a proportion of 11 coming from the DPR and 6 coming from the government.
4. For the 2020-2024 period, there are 254 draft laws consisting of 123 from the DPR, 32 from the DPR and Government proposals, 23 from the DPR and Government proposals, 23 from the DPR and DPD projects, 1 from the DPD and Government proposals, 50 from the DPD, and 25 comes from the

DPD. Until this research was conducted, 12 have been successfully passed into law with the proportion of 5 from the DPR, 1 from the government and 6 from the Government and the DPR.

CONCLUSION

The authority to form laws in Indonesia has evolved along with the change in the existing constitution, which was originally in the domain of executive power (Government) and shifted to the legislative domain (DPR/DPD) in line with the desire to realize a constitutional format that can adapt to developments. era (historical) and efforts to balance institutions in Indonesia (theoretical). Examining the implementation at a practical level, the authority to form a constitution specifically in the perspective of output, from the period 2004 to 2022. The executive institution contributed forty percent as the proponent of the total number of laws passed. Condition is a presentation of the constitutional system in Indonesia in the context of the formation of laws which can at least be interpreted as a form of incompatibility with generally accepted practice and on the other hand as a form of uniqueness or characteristic of the Indonesian legal system.

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