

# **Standardization Harmonization, Consolidation, and Refinement of Draft Laws in DPR and DPD**

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## **Abstract**

The purpose of this research is to find a formula for harmonizing, consolidating, and refining the concept of draft laws. Harmonization activities are based on policy formulation

(regulation system) and material harmonization (substance), with the aim of adjusting the existing national legal system to the new legal system, creating a harmonious law as a positive law (harmony of law). The plural nature of the places where harmonization, consolidation, and refinement of the concept of draft laws occur are the Indonesian House of Representatives (DPR) - Committee on Legislation (Baleg), the Government - Ministry of Law and Human Rights (Depkumham), and the Regional Representative Council (DPD) - Committee on Legislation and PPUU. This makes the practice of harmonization have different interpretations from each institution, which highlights the need for agreement among these institutions in determining standardization in harmonization, consolidation, and refinement of the concept of draft laws. Furthermore, an analysis is needed to determine the appropriate time for harmonization, consolidation, and refinement of the concept of draft laws, whether it should be done before submitting the bill as is currently done, or after discussions are completed, or both before and after. Therefore, it is necessary to investigate the effectiveness of the implementation of the activities of harmonizing, consolidating, and refining the concept of draft laws to minimize the filing of judicial reviews at the Constitutional Court.

## **Keywords**

*Harmonization, Consolidation, Refinement*

## **I. Introduction**

In Indonesia, the types and hierarchy of formal legislation are stipulated in Law No. 12 of 2011 concerning the Formation of Legislation. According to Article 7, Paragraph (1), the formal hierarchy of legislation, from highest to lowest, is as follows: the

1945 Constitution, People's Consultative Assembly Decrees (TAP MPR), Acts of Parliament/ Government Regulation in Lieu of Law (PERPU), Government Regulations (PP), Presidential Regulations (PERPRES), Provincial Regulations (PERDA), and District/City Regulations (PERDA)<sup>1</sup>. There are also regulations that are not included in the hierarchy, but are enforced based on orders from higher legislation or established based on authority in accordance with Article 8, Paragraph (1). These include the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministries, bodies, institutions, or commissions of equal level established by law or by government order based on the law, Provincial Regional House of Representatives, Governor, District/City Regional House of Representatives, Regent/Mayor, Village Head or equivalent<sup>2</sup>.

The Law, hereinafter referred to as UU, is a form of legislation created by the House of Representatives with the joint approval of the President and is applied throughout the territory of the Republic of Indonesia. Therefore, UU must be the main reference in every regulation that is made, and must also reflect the values of Pancasila and the 1945 Constitution in every content. One indicator of the lack of synchronization between UU and the state ideology, Pancasila and the 1945 Constitution, is the submission of judicial review of the 1945 Constitution against UU to the Constitutional Court. From 2003 to 2021, a total of 1484 cases have been submitted, consisting of 274 granted, 519 rejected, 463 not accepted (NO), 146 withdrawn, and 23 cases dismissed<sup>3</sup>. The number of cases submitted to the Constitutional Court shows

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<sup>1</sup> Article 7 paragraph (1) of Law 12 of 2011

<sup>2</sup> Article 8 paragraph (1) of Law 12 of 2011

<sup>3</sup> Processed from the Constitutional Court website <https://www.mkri.id/index.php?page=web.RekapPUU&menu=4>, October 8, 2021.

that the legislation produced (UU) still has many weaknesses, causing certain articles to be in conflict with the constitution/UUD NKRI 1945. To minimize the occurrence of judicial reviews in the Constitutional Court, the makers of UU should adhere to the principles of good legislative drafting, as outlined in Article 5 of Law Number 12 of 2011, which include clarity of purpose, appropriate institutional or official makers, suitability of type, hierarchy, and material content, feasibility and usefulness, clarity of formulation, and transparency. Additionally, the process of harmonizing, consolidating, and refining the draft bill (RUU) should be carried out<sup>4</sup>. The obligation to harmonize is set out in Articles 46(2), 47(3), and 48(3) of Law 12 of 2011, which require every initiator of UU to first harmonize, consolidate, and refine the draft bill's concepts. For initiators who are the president/government, harmonization, consolidation, and refinement of the draft UU concepts are carried out under the Ministry of Law and Human Rights, headed by the directorate general of legislation. For initiators who are DPR RI, harmonization, consolidation, and refinement of the draft UU concepts are carried out through the House of Representatives' legislative body (Baleg), while for initiators who are DPD RI, harmonization, consolidation, and refinement of the draft UU concepts are carried out through the Preparation Committee for Legislation (PPUU), which is then coordinated with the House of Representatives' support staff.

The harmonization carried out by each institution will create different concepts and perspectives in interpreting each content in a draft bill that will undergo harmonization, consolidation, and refinement. Harmonization activities must be carried out in the formulation of policy concepts (regulatory systems) and

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<sup>4</sup> M. Jeffri Arlinandes Chandra et al., "Tinjauan Yuridis Pembentukan Peraturan Perundang-Undangan Yang Sistematis , Harmonis Dan Terpadu Di Indonesia," *Jurnal Legislasi Indonesia* 19, no. 147 (2022): 1–11.

harmonization of material (substance). The purpose of harmonization is to make adjustments to the existing national legal system with the legal system that will be established in order to create harmonious law as positive law (harmony of law). According to Lawrence M. Friedman, the ideal formulation steps in harmonizing legislation are to adjust the elements of the existing legal order within the national legal system, including legal substance, legal structure, and legal culture<sup>5</sup>.

Legal harmonization refers to the process of aligning or standardizing legal systems across different jurisdictions, particularly in the context of international or regional agreements. The aim is to reduce discrepancies and conflicts that may arise due to differences in laws and regulations. The concept of legal harmonization, as you mentioned, involves several components<sup>6</sup>:

- a. Legal Substance: This refers to the actual content of laws and regulations. Harmonization in this context means achieving similarity or compatibility in the substantive provisions of laws. For example, if multiple countries have different regulations regarding product safety, harmonization might involve efforts to establish common standards.
- b. Legal Structure: This relates to the organization and framework of the legal system, including the court system,

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<sup>5</sup> Lawrence M Friedman, *American Law: An Introduction (Hukum Amerika: Sebuah Pengantar)* (Jakarta: PT Tata Nusa, 2001).

<sup>6</sup> Ana Fauzia, Fathul Hamdani, and Deva Octavia, "The Revitalization of The Indonesian Legal System In The Order Of Realizing The Ideal State Law," *Progressive Law Review* 3, no. 01 (2021), <https://doi.org/10.36448/plr.v3i01.46>; Farida Pahlevi, "Pemberantasan Korupsi Di Indonesia Perspektif Legal System Lawrence M. Freidmen," *El-Dusturie* 1, no. 1 (2022), <https://doi.org/10.21154/eldusturie.v1i1.4097>; Anthin Lathifah, Briliyan Ernawati, and Anwar Masduki, "Problems with the Islamic Legal System Regarding Child Marriages in Indonesia during the Covid-19 Pandemic Period," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022), <https://doi.org/10.18326/IJTIHAD.V22I2.155-176>.

administrative bodies, and the overall legal process. Harmonization might involve adjusting procedural aspects of the legal systems to ensure consistency and facilitate cooperation between jurisdictions.

- c. Legal Culture: This encompasses the values, principles, and societal norms that underpin a legal system. While this aspect is more challenging to harmonize directly, efforts can be made to foster a shared understanding of legal principles, which can lead to a more consistent interpretation and application of laws.

At least the activities of harmonization, rounding off, and solidifying the concept of the draft law should be carried out in order to align the material of the draft law with Pancasila, the 1945 Constitution, and other legislation, as well as the techniques of drafting legislation. This should also result in agreement on the substance being regulated. Therefore, the activities of harmonization, rounding off, and solidifying the concept of the draft law should be carried out comprehensively, not only by each institution but also coordinated by the institution discussing the draft law. Based on this background, in this paper based on research results, we will discuss and analyze the standard process of harmonization, rounding off, and solidifying the concept of the Draft Law (RUU) in the Indonesian House of Representatives (DPR) and the Regional Representatives Council (DPD).

## II. Method

The research method that will be used in this study is a combination of normative research supported by empirical data from field research. Field research is a type of research that uses information from the subjects or respondents, usually called informants, through data collection instruments such as interviews, and then combines it with data from literature

materials, especially those related to legal issues<sup>7</sup>. The approach emphasizes the search for norms contained in legal regulations and existing legal theories and uses a conceptual approach, starting from views and doctrines that develop in the field of law<sup>8</sup>. The data collection conducted by the author includes primary legal materials and secondary legal materials. Primary legal materials refer to legally binding legal materials. The primary legal materials used in this research consist of legislation<sup>9</sup>. Secondary legal materials are materials that provide explanations about primary legal materials, such as draft legislation, research results, works by legal experts, and so on<sup>10</sup>.

### III. Ideal Harmony

The need for a harmonious and integrated legal system is essential to achieve order, ensure legal certainty, and provide legal protection. The establishment of a harmonious and integrated legal system is necessary to develop laws that support national development in general. As a country that upholds the rule of law, with the three main goals of legal certainty, utility, and justice, Indonesia needs a process that operates within the legal subsystems, which includes the legal substance, legal structure, and legal culture, as mentioned by Lawrence M. Friedman<sup>11</sup>. The main principle that must be firmly upheld in every rule of law country is that lower legislation always implements higher legislation. Lower legislation must not deviate from, disregard, or contradict higher legislation. Furthermore, from the perspective of those authorized to make laws, law makers create a hierarchical unity,

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<sup>7</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo Persada, 2012), 14.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

<sup>9</sup> Soekanto and Mamudji, *Penelitian Hukum Normatif*.

<sup>10</sup> Soekanto and Mamudji.

<sup>11</sup> Achmad Ali, *Menguak Takbir Hukum* (Jakarta: Ghalia Indonesia, 2017).

starting from the highest to the lowest level. This is because the legal system does not allow or justify conflicts between its elements or parts. The legal system is consistent in facing conflicts. However, sometimes there may be interactions between its elements or parts that may result in conflicts within the legal system<sup>12</sup>.

Regulation has various meanings that are not limited to a single concept. In the public policy arena, regulation makes for the promulgation of targeted rules, usually accompanied by an authoritative body to monitor and enforce compliance. The main principle that must be firmly held in every rule of law is that lower regulations always implement higher regulations. Lower regulations cannot deviate, set aside, or contradict higher level regulations. Furthermore, from the perspective of law-makers, the law-making bodies form a hierarchical unity, from the highest to the lowest. This is because the law as a system does not allow or justify the existence of conflicts between its elements or parts. The legal system is consistent, that is, consistent in facing conflicts. Indeed, sometimes within the legal system there is interaction between its elements or parts, which allows for conflicts to arise.

Such conflicts are not impossible to occur due to various interests within society, so that the principles of law, "*lex superior derogat legi inferiori, lex specialis derogat legi generali, and lex posteriori derogate legi priori*" will consistently apply. The problem is how to overcome conflicts, boundaries of differences between provisions of regulations as sub-systems or legal systems in a national legal unity, so that they are not hindered by differences and do not overlap or duplicate<sup>13</sup>. This is where the process of legal harmonization is needed.

The term harmonization is actually a terminology in music to indicate the harmony and beauty of tones. This term of

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<sup>12</sup> Rudy Hendra Pakpahan, "Harmonisasi Dalam Pembentukan Peraturan Perundang-Undangan," Kemenkumham Sulut, 2010.

<sup>13</sup> Pakpahan.



harmonization becomes relevant to use in the field of law, considering that law also needs harmony in order to be beneficial to all layers of society. The National Law Development Agency (BPHN) emphasizes the importance of legal harmonization, stating that a legal system continues to undergo changes, "the Indonesian national legal system is also the result of harmonization between a number of elements and factors that are processed based on and firmly adhere to legal paradigms, principles, norms, and methods that have been agreed upon beforehand"<sup>14</sup>.

According to L.M. Gandhi, legal harmonization involves adjusting legislation, government decisions, judicial decisions, legal systems, and legal principles with the aim of improving legal unity, legal certainty, justice and proportionality, usefulness and clarity of law, without obscuring or sacrificing legal pluralism<sup>15</sup>.

Efforts to harmonize legal systems are related to imbalances between the different elements of legal systems, and can be done by eliminating imbalances and adjusting the different elements of legal systems. Conceptually, legal harmonization can be done as a whole, which involves the three components of legal systems: legal substance, legal structure, and legal culture, or one part of the chain of relationships of the three components of legal systems<sup>16</sup>.

In the context of creating legislation, legal harmonization is important to eliminate contradictions between legal norms that will be regulated in a legislation or against other legislation in the paradigm of the theory of hierarchy (stufenbau theory) and the legal principle of *lex superior derogat legi inferiori* (higher laws override lower laws), prevent contradictions between legal norms and legal principles, public interests, laws with moral values, and

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<sup>14</sup> Kusnu Goesniadhie S, *Harmonisasi Sistem Hukum: Mewujudkan Tata Pemerintahan Yang Baik* (Malang: Nasamedia, 2010).

<sup>15</sup> Goesniadhie S

<sup>16</sup> Goesniadhie S

the ideology of the state, as well as prevent legal norms that violate human rights<sup>17</sup>.

In addition to the harmonization process, in the formation of a regulation, rounding and consolidation are also carried out. Rounding itself means forming into a round shape or forming a unity, a whole as a whole, a process of making something round. The English equivalent for "pembulatan" is "integration", which means to make into a whole by bringing all parts together, unity, to join with something else. "Integration" itself means integrating or being integrated. Thus, "pembulatan" means the process of making all elements integrated into a cohesive unity<sup>18</sup>.

On the other hand, "pemantapan" is the process, method, or act of solidifying or stabilizing something. The word "mantap" itself means firm, strong, or stable. In English, the equivalent is "consolidation," which means to consolidate or become solid or strong. Thus, "pemantapan" etymologically means making something solid, coherent, or compact, stable, strong, and firm<sup>19</sup>. Therefore, it is known that the harmonization, rounding, and consolidation processes are a series of activities in drafting a regulation. However, of the three stages, harmonization is the most important stage that determines the quality of the legal norms that are rounded and consolidated in the drafting of the regulation. Therefore, this study's discussion is more focused on the aspect of harmonization.

Harmonization ideally should be done during the drafting of legislation. Harmonizing a draft law includes two aspects as follows<sup>20</sup>:

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<sup>17</sup> Ade Kosasih, *Formula Praktis Memahami Teknik & Desain Legal Drafting* (Bogor: Herya Media, 2015), 42.

<sup>18</sup> Kementerian Hukum dan Hak Asasi Manusia, *Tanya Jawab Pembentukan Peraturan Perundang-Undangan* (Jakarta: KemenkumHAM, 2021).

<sup>19</sup> Kementerian Hukum dan Hak Asasi Manusia

<sup>20</sup> A.A. Oka Mahendra, "Harmonisasi Peraturan Perundang-Undangan," n.d.

1. Harmonization of the content of the draft law with:
  - a. Pancasila;
  - b. The 1945 Constitution of the Republic of Indonesia/vertical harmonization;
  - c. Other laws/horizontal harmonization;
  - d. Principles of legislation:
    - 1). Procedural principles;
    - 2). Substantive principles; and
    - 3). Other principles that are relevant to the field of law of the draft law in question.
2. Harmonization of the draft law with the techniques of drafting legislation, including:
  - a. Framework of legislation;
  - b. Specific issues;
  - c. Language variations; and
  - d. Form of the draft legislation.

The above harmonization process has the function of preventing and addressing legal disharmony. Harmonization can also guarantee the process of drafting a law that complies with principles for legal certainty. From this understanding, it can be said that harmonization of legislation is the process of aligning and synchronizing laws as an integral part or subsystem of the legal system to achieve legal objectives<sup>21</sup>.

The need for the legal harmonization process is expected to ensure that legal norms within a legislation or between legislations do not contradict each other, avoid duplication of regulations, and strengthen each other in the national legal system. Therefore, legal drafters must have good and accurate legal harmonization skills in drafting legislation<sup>22</sup>.

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<sup>21</sup> Mahendra.

<sup>22</sup> Mahendra.

## IV. Standard Process of Harmonization, Consolidation, and Stabilization of Bills in the DPR and DPD

The diversity of Indonesia's legal system has the potential to cause disharmony. This potential disharmony arises because there are so many types of regulations. These regulations are issued by various agencies that often do not coordinate well with each other. Although there is an order of regulations, it cannot always be used as a guide because there are various effective regulations that are not recognized by positive law. All of these issues contribute to the disharmony of Indonesia's legal system.

According to Supratman Andi Agtas, Chairman of the DPR Legislation Body, there are several causes of legal disharmony, including:

- a. Differences between various laws or regulations. In addition, the increasing number of regulations makes it difficult to know or understand all of them.
- b. The application of legal fiction that assumes everyone is familiar with all the laws that apply, which is not effective or accurate in reality.
- c. Conflicts between regulations and implementing regulations.
- d. Differences between laws and government agency policies. Various guidance documents (juklak) are known that sometimes conflict with the laws they are meant to implement.
- e. Differences between laws and court precedents and circular letters from the Supreme Court.
- f. Conflicting policies of central government agencies.
- g. Differences between central and regional government policies.

- h. Differences between legal provisions and specific formulations.
- i. Conflicts between government agencies due to an unclear and unsystematic division of authority can cause disharmony. Disharmony can be found in various areas of legal regulation.

Each formulation must be interpreted according to its own context, which are all within the scope of a national legal system, namely the Indonesian legal system. Therefore, it is necessary to understand the characteristics of the Indonesian legal system. To gain a more complete understanding of the Indonesian legal system, it is necessary to understand the definition of the legal system itself, the historical background that accompanies its journey, and the material and formal sources of law used<sup>23</sup>.

To prevent ongoing legal disharmony at the level of implementing regulations, legal harmonization must begin at the "upstream" level of legislation, starting with laws. Therefore, before a draft law is enacted, approved, and promulgated, harmonization must first be carried out. Legal harmonization in the formation of legislation is essentially the responsibility of the legislative body, the DPR and/or DPD, and the President. More precisely, the initiator institution of a draft law.

As is known, the DPR holds the power to form laws<sup>24</sup>. On the other hand, the DPD also has the initiative to submit a draft law, although the draft law that is within the DPD's jurisdiction is only limited to regional autonomy laws, central-regional relations, formation, expansion, and merger of regions, management of natural resources and other economic resources,

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<sup>23</sup> Goesniadhie S, *Harmonisasi Sistem Hukum: Mewujudkan Tata Pemerintahan Yang Baik*.

<sup>24</sup> The provision of Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

as well as those related to central and regional financial balance<sup>25</sup>. Similarly, the President also has the right to submit a draft law<sup>26</sup>.

These three institutions are obliged to first carry out harmonization of the draft law internally before it is submitted and discussed together. Both the procedural and material harmonization standards of the three institutions formally refer to the Law on the Formation of Legislation, namely harmony towards higher laws in accordance with the legal principle of *lex superior derogat lex inferior*, harmony between laws horizontally. In addition, in the process of legal harmonization, attention must be paid to the pillars of the state as a guide for all legislation in Indonesia<sup>27</sup>.

The pillars of the state in Indonesia based on the 1945 Constitution include<sup>28</sup>:

- a. The state is based on law and is a constitutional state.
- b. Popular sovereignty guided by the wisdom of deliberation/representation.
- c. General welfare and social justice for all people.

In addition to paying attention to the pillars of the state, legal harmonization must also consider the principles of the formation of laws and regulations. These legal principles are the "heart" of legal regulations. This is because legal principles are the broadest foundation for the emergence of a legal regulation. This means that legal regulations can ultimately be traced back to these principles. Legal principles are like the basis or reason for the emergence of legal regulations, or the *ratio legis* of legal regulations. Legal principles will not lose their power with the

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<sup>25</sup> The provision of Article 22D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

<sup>26</sup> The provision of Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

<sup>27</sup> The result of an interview with Abdul Wahid, Deputy Chairman of the Legislative Body of the House of Representatives on August 29, 2022.

<sup>28</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012).

birth of a legal regulation, but will continue to exist and give birth to subsequent regulations<sup>29</sup>.

The harmonization standards carried out within the DPR according to Supratman are essentially the same as the harmonization standards carried out by the executive and the DPD. This is because the guidelines or technical references for harmonization are all based on the Law on the Formation of Laws and Regulations. The emphasis of harmonization is on the philosophical, sociological, and juridical aspects<sup>30</sup>. The focus of the consolidation and refinement is on the normative substance or material of the proposed legislation. If there are any differences, they are only in the working mechanisms or procedures. Differences in views that occur during discussions are more related to political aspects than to juridical aspects. This is because the interests and missions brought by each institution are different<sup>31</sup>.

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<sup>29</sup> Rahardjo.

<sup>30</sup> Suwari Akhmaddhian, "Pelatihan Pembuatan Peraturan Desa Di Kecamatan Banjaran, Majalengka," *Empowerment: Jurnal Pengabdian Masyarakat* 3, no. 01 (2020), <https://doi.org/10.25134/empowerment.v3i01.2495>; Suwandoko and Rodyah, "The Implementation of Bureaucratic Reform Pillars in Increasing Taxpayer Compliance at Semarang Tax Service Office," *Journal of Indonesian Legal Studies* 3, no. 1 (2018), <https://doi.org/10.15294/jils.v3i01.23244>; Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022), <https://doi.org/10.15294/lesrev.v6i2.58131>.

<sup>31</sup> The result of an interview with Abdul Wahid, Deputy Chairman of the Legislative Body of the House of Representatives on August 29, 2022.

The process of harmonizing draft laws in the DPR includes several stages, namely<sup>32</sup>:



Based on the chart, the process of legal harmonization on draft laws is conducted after the finalization stage. However, according to Supratman, the harmonization process actually starts from the beginning or perhaps it is more accurate to call it the pre-harmonization process<sup>33</sup>. The stages of the legal harmonization process for a draft bill in the Indonesian Parliament are as follows<sup>34</sup>:

- a. The proposed draft bill along with an academic paper is submitted in writing to the head of the Legislative Drafting Committee.
- b. The head of the Legislative Drafting Committee orders the Expert Team and Secretariat to carry out pre-harmonization activities, rounding off, and strengthening the concepts of the proposed draft bill originating from the Committee.
- c. The Commission responsible asks the Legislation Body through a letter to carry out harmonization, rounding off, and

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*



strengthening of the concept of the draft bill. The request is in accordance with the duties of the DPR Legislation Body, as stipulated in Article 46 (2) of Law Number 15 of 2019 concerning Changes to Law Number 12 of 2011 concerning the Formation of Laws and Regulations *jo.* Article 105 letter c of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional People's Representative Council, *jo.* Article 66 letter e of DPR Regulation Number 1 of 2020 concerning the Code of Conduct, *jo.* Article 66 to Article 75 of DPR Regulation Number 2 of 2020 concerning the Formation of Laws.

- d. For the purpose of harmonization, rounding off, and strengthening the concept of the proposed draft bill, the Legislative Drafting Committee holds a joint session with the relevant Committee to obtain an explanation.
- e. In case the Legislative Drafting Committee finds problems related to substance, the Legislative Drafting Committee discusses them with the relevant Committee

The considerations in the process of harmonization, synchronization, and consolidation of the concept of a proposed bill must use the test stones of Pancasila, the 1945 Constitution of the Republic of Indonesia, national goals, as well as the suitability of philosophical, juridical, sociological, and political elements<sup>35</sup>. According to Jimly Asshiddiqie, the main paradigm of every regulation in Indonesia (not just laws) should be the state foundation, Pancasila. Therefore, the five principles of Pancasila must be reflected in every content of the regulation. Hence, a regulation can truly reflect the values of Pancasila as the source of all legal sources that include religious values of all citizens through their belief in one God, just and civilized humanity principles or the principle of fair and civilized humanity, ensuring and

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<sup>35</sup> *Ibid*

strengthening nationalistic principles of Indonesia through the unity of Indonesia principle, strengthening sovereignty values of the people through the people's sovereignty principle led by wisdom and deliberation, and establishing efforts to build social justice or realizing social justice for all Indonesian people<sup>36</sup>.

The consideration of harmony with other laws is also a consideration, such as the suitability of definitions and the potential for overlapping regulations with other laws<sup>37</sup>. In other words, horizontally, the indicator of harmony with other laws is also used. Here, the general principles of the content of regulations must be considered, such as the principle of *lex superior derogat lex inferior*, the principle of *lex specialist derogat lex generalis*, the principle of *lex posterior derogat lex a priore*, the principle of *principal derogat lex specialist*, and other principles. In addition, in this harmonization, the Constitutional Court Decisions and Jurisprudence regarding the same matter that will be regulated in the draft law are also taken into consideration.

Functionally, the principles of formation of regulations are divided into two technical aspects of the formation of regulations, namely formal principles that relate to procedures and forms, and secondly, material principles that relate to the substance or content of the material that will be regulated. The formal principles of the formation of laws referred to are the principles of the formation of laws that have been determined in the Law on the Formation of Regulations, namely:

1. Principle of Clarity of Purpose  
Under the "principle of clarity of purpose", every legislative act must have a clear purpose to be achieved.
2. Principle of Institutional or Appropriate Authority

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<sup>36</sup> Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2016).

<sup>37</sup> The result of an interview with Abdul Wahid, Deputy Chairman of the Legislative Body of the House of Representatives on August 29, 2022.

Based on the "principle of institutional or appropriate authority", every type of legislative act must be made by a state institution or a legislative authority that is authorized to make legislative acts. Legislative acts made by unauthorized state institutions or officials may be annulled or legally void.

3. Principle of Consistency Between Type, Hierarchy, and Content

The "principle of consistency between type, hierarchy, and content" means that in the formation of legislative acts, the content must be in accordance with the appropriate type and hierarchy of legislative acts.

4. Principle of Applicability

The "principle of applicability" means that every legislative act must consider the effectiveness of the legislative act in society, both philosophically, sociologically, and legally.

5. Principle of Utility and Efficiency

The "principle of utility and efficiency" means that every legislative act must be made because it is really needed and useful in regulating social, national, and state life.

6. Principle of Clarity of Formulation

Under the "principle of clarity of formulation", every legislative act must meet the technical requirements of legislative drafting, systematics, choice of words or terms, and clear and easily understandable legal language, so that it does not give rise to various interpretations in its implementation.

7. Principle of Transparency

Under the "principle of transparency", in the formation of legislative acts, from planning, drafting, discussion, approval or determination, and promulgation, everything must be transparent and open. Thus, all layers of society have the widest possible opportunity to provide input in the formation of legislative acts.

Meanwhile, the principle of the material content of legislation is divided into two, namely the general material principle which regulates the limits of rules that can be regulated, and the specific material principle which is the basis for the content of the material to be regulated, including:

1. The principle of clear terminology and systematics (*het beginsel van duidelijke terminologie en duidelijke systematiek*);
2. The principle of the ability for every person to know and recognize a regulation (*het beginsel van de kenbaarheid*);
3. The principle of legal certainty (*het rechtszekerheidsbeginsel*)<sup>38</sup>;
4. The principle of equal treatment under the law (*het rechtsgelijkheidsbeginsel*)<sup>39</sup>;
5. The principle of special treatment for certain conditions (*het beginsel van de individuele rechtsbedeling*).

Explicitly, the principles of the material formation of legislation are regulated in Law Number 12 of 2011 concerning the Formation of Legislation, as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. The principles of the formation of regional regulations, namely clarity of purpose, proper institutional or regulatory authority, suitability between type and material content, feasibility and effectiveness, clarity of formulation, and transparency, are intended.

1. Principle of Protection

The "principle of protection" means that every material content of legislation must function to provide protection to create social order.

2. Humanitarian Principle

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<sup>38</sup> Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (2023), <https://doi.org/10.24818/TBJ/2023/13/1.02>.

<sup>39</sup> Patrick S. Shin, "The Substantive Principle of Equal Treatment," *Legal Theory* 15, no. 2 (2009), <https://doi.org/10.1017/S1352325209090090>.

With the "humanitarian principle," every material content of legislation must reflect the protection and respect for human rights as well as the dignity of every citizen and resident of Indonesia proportionally.

3. Nationality Principle

The "nationality principle" means that every material content of legislation must reflect the character and nature of the diverse Indonesian nation while maintaining the principle of the Unitary State of the Republic of Indonesia.

4. Family Principle

The "family principle" means that every material content of legislation must reflect deliberation to achieve consensus in every decision-making process.

5. Archipelagic Principle

With the "archipelagic principle," every material content of legislation must always consider the interests of all regions in Indonesia, and legislation made in regions is part of the national legal system based on Pancasila and the 1945 Constitution.

6. Unity in Diversity Principle

The "unity in diversity principle" means that the material content of legislation must consider the diversity of the population, religion, ethnicity, and social class, as well as special conditions of the region and culture in community, nation, and state life.

7. Justice Principle

The "justice principle" means that every material content of legislation must reflect proportional justice for every citizen.

8. Equality Principle in Law and Government

The "equality principle in law and government" means that every material content of legislation must not contain anything that discriminates based on background, such as religion, ethnicity, race, gender, or social status.

9. Order and Legal Certainty Principle

The "order and legal certainty principle" means that every material content of legislation must be able to realize order in society through the guarantee of legal certainty.

10. Balance, Harmony, and Coordination Principle

The "balance, harmony, and coordination principle" means that every material content of legislation must reflect balance, harmony, and coordination between individual and societal interests and the interests of the nation and state.

The importance of legal principles in harmonizing legislation is to be able to see the "red thread" of the positive legal system that is traced and examined. These legal principles can be used as a guide for the formation of laws so that they do not deviate from the legal ideals (*rechtsidee*) that have been agreed upon. However, theoretically, legal principles are not legal rules (*rechtsregel*), because legal principles cannot be directly applied to a concrete event by considering it as part of a legal norm. Nevertheless, legal principles are still necessary in the formation of legislation because law cannot be understood without legal principles<sup>40</sup>.

According to Muhammad Afnan Hadikusuma, harmonizing a draft law with the principles of law formation mentioned above is not enough to guarantee legal certainty of a law. In its implementation, it is possible for a law to conflict with the interests of the general public. Therefore, even if legal harmonization has been carried out on a draft law, both formally and materially involving experts or specialists, a valid test or public consultation, which is more commonly known in the Law on the Formation of Legislation, must still be carried out. This is important to see the ability of a law's existence sociologically.

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<sup>40</sup> Suprin Na'a, "Ruang Lingkup Muatan Materi (Het Onderwerp) Peraturan Daerah Provinsi Dan Kabupaten/Kota Dalam Rangka Penyelenggaraan Pemerintahan Daerah" (Universitas Padjajaran, 2003).

Thus, it is hoped that the law to be enforced later will be a responsive law<sup>41</sup>.

## V. Conclusion

The standard for harmonizing draft laws between the DPR and DPD have similarities, which are both referring to Pancasila as the philosophical foundation of the content of the law, the interests of society as the sociological foundation, and the formal principles of law formation as well as the material principles of the content of legislation regulated in the Law on the Formation of Legislation. Meanwhile, the standard for the time limit for the harmonization process in both institutions is not specifically regulated. The formation of a benchmark in the implementation of synchronization and harmonization in each draft law is necessary to ensure consistency, so that the same input is obtained in the harmonization process.

The process of harmonization, consolidation, and refinement in the Ministry of Law and Human Rights often encounters obstacles that hinder the smoothness of the harmonization, consolidation, and refinement process, including discussions on new substance or content that result in changes in the conception of regulatory content that require careful and in-depth analysis. In addition, the revision of the Government Regulation on the Implementation of the Law on the Formation of Legislation provides a clear benchmark in the implementation of synchronization and harmonization of a piece of legislation across all institutions involved in the drafting of the law.

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<sup>41</sup> The result of an interview with Muhammad Afnan Hadikusumo, First Deputy Chairman of the Law Drafting Committee (PPUU) of the Regional Representative Council, on July 13, 2022.

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