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REVIEW ARTICLE

POLITICS OF LAW IN THE ESTABLISHMENT OF A NATIONAL REGULATORY BODY: A NEW DIRECTION FOR LEGAL REFORM

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ABSTRACT

The aims of this study are to analyze and describe National Regulatory Body in the context of Indonesian Law after the Amendment of Formulation of Laws and Legislation Act. The method used is a qualitative research method that is normative legal research with a focus of research that is discussing the politics of law of forming a national regulatory body. The study revealed that the substance in Law number 15 of 2019 is the existence of a new institution that organizes government affairs in the field of the formation of legislation. The agency in the Amendment to the PPP Act, among others, has the function or task of coordinating the preparation of legislation program within the Government, coordinating the planning of the drafting of Presidential Decree coordinating the harmonization, rounding up, and consolidating the conception of a draft bill originating from the President, coordinating the preparation of deliberations for the Draft Bill with the Parliament, coordinating the harmonization, rounding up, and consolidating the conception of the bill originating from the President and strengthening the conception of the draft of Decree, coordinating the harmonization, rounding and consolidation of the draft Decree, enacting legislation in the Official Gazette of the Republic of Indonesia or the Official Gazette of the Republic of Indonesia.

Keywords: *Politics of Law; Legal Policy; Legislation*

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INTRODUCTION

In the 2019 presidential and vice-presidential debates, the Jokowi-Ma'ruf Amin pair conveyed one of their programs in responding to the issue of Law and Human Rights to create a national regulatory body (BLN). The breakthrough offered by Jokowi-Ma'ruf amen arose from the turmoil in the legal dynamics that occurred in Indonesia. There are many regulations at the ministry or regional level that are not in line with the central government's agenda. Besides, many rules and regulations overlap one another. Thereby hampering the rate of movement of legal reform efforts launched by the government.

Besides, the agencies tasked with drafting national legislation ranging from the BPHN to the Kemenkumham institutions are considered to be less alert and productive. This happens because of the partial division of labor between institutions, which slows down communication and synergy in the preparation of legislation products. As a result, the resulting legislative products tend to be slow.

Responding to this, Jokowi-Makruf Amin in his national agenda will declare legal reform by forming the National Regulation Agency (*Badan Legislasi Nasiona*, hereinafter as BLN). This unification is the government's effort to minimize the obstacles in making Prolegnas.

At present, Jokowi-Makruf Amin has been legally elected as President and Vice President of the Republic of Indonesia. The BLN idea will be realized as one of the promises of the campaign. This is supported by the validity of Law number 15 of 2019 concerning the formation of laws and regulations as amendments to law number 12 of 2011. The President and the Parliament have one voice to create an institution that

functions as a navel for national legislation, harmonizing the laws which have tended to overlap, obesity regulations, and regulations that hinder government programs and performance.

METHOD

The research method used is qualitative research methods, namely normative legal research. The focus of the research is to discuss the politics of law of forming a national regulatory body. Data sources consist of primary sources in the form of Law No. 15 of 2019, secondary in the form of legal books relating to the study of this research such as theses, journals, and dictionaries. Third, tertiary sources in the form of supporting theories.

ANALYSIS OF POLITICS OF LAW IN THE ESTABLISHMENT OF THE NATIONAL REGULATORY AGENCY

I. POLITICS OF LAW IN INDONESIA

Padmo Wahjono in his book Indonesia Negara Based on Law defines politics of law as the basic policy that determines the direction, form, and content of the law to be formed. (Wahyono, 1986) This definition is still abstract and is then supplemented by an article entitled "Investigating the Process of Establishing Legislation," which says that politics of law is the policy of state administrators about what is used as a criterion to punish something. In this case, the policy can be related to the formation of law, the application of the law, and enforcement itself (Wahyono, 1991).

So that the understanding of politics of law in the Indonesian context, namely legal policies that will or have been implemented nationally by the Indonesian government include; legal development that focuses on making and updating legal materials to suit their needs; the implementation of existing legal provisions including the affirmation of the functions of the institution and the development of law enforcers

Political law becomes the basic policy that determines the direction, form, and content of the law formed. National politics of law as a basic form for all forms and

processes of formulation, formation, and development of law in Indonesia which consists of several interdependent and related components to achieve the agreed common goals (Mahfud, 1989).

Furthermore, it can be concluded that politics of law was born on the encounter between the realism of life with the demands of idealism. Politics of law talks about "what should be" which is not always the same as "what is". Political law is not passive about "what is" but must actively find "what should be". Thus, politics of law should not be shackled by "what is". Therefore, the existence of politics of law is marked by demands to choose and take an action or decision (Mattalatta, 2009).

1. National Legislation Program

The national legislation program is usually abbreviated as Prolegnas in the context of political and legal policy in Indonesia intended to plan a program of law formation which is considered a national priority to overcome various legal problems in society. Prolegnas is carried out for five years of the term of office of the House of Representatives and the President as two institutions that have the authority to propose laws and regulations as referred to in the provisions of Article 20 of the 1945 Constitution after the amendment (Riswanto, 2016).

Regulations on Prolegnas are regulated in Article 16 of Law No. 12 of 2011 concerning the Formation of Laws and Regulations which state that planning for the formulation of laws is carried out in Prolegnas. The Prolegnas is equipped with instruments for setting priorities in the formation of laws. Next, the Prolegnas mechanism is regulated in Perpres No. 87 of 2014 concerning Implementing Regulations of Law No .12/2011 concerning the Formation of Regulations and Regulations that become binding regulations for all ministries and non-ministerial government agencies when preparing and proposing a Draft Law.

Then, DPR RI Regulation No. 1 of 2012 concerning Procedures for the Preparation of the National Legislation Program and DPR RI Regulation No. 1 of 2012 jo. DPR RI Regulation No. 1 of 2014 concerning the DPR RI Rules of Conduct which bind DPR members who are members of the Commission, the Legislative Body (Baleg), and the Factions in the DPR RI in proposing a bill.

The mechanism of drafting and proposing a bill in the Presidential Regulation and DPR RI Regulations binds each institution (President and DPR) to then determine Prolegnas in the DPR RI plenary session in the form of the DPR RI Decree on Prolegnas annually and priority Prolegnas annually. For example, based on the mechanism stipulated in Perpres No.87/2014 and DPR RI Regulation No.1 / 2012 jo.

DPR RI Regulation No.1 / 2014 DPR plenary session has decided DPR RI Decree No. 06A / DPR RI / II / 2014-2015 regarding the 2014-2015 National Legislation Program and the National Legislation Program of the Draft Priority Laws for 2015 have approved the Prolegnas 2015-2019 as many as 160 bills were targeted by the DPR and the government to be completed throughout 2015-2019 or during one period of DPR membership.

Since it was first conceived in 1976/77, the National Legislative Program was intended as an instrument of planning the formation of laws and regulations which was carried out in a directed, coordinated, and systematic manner. Because the ultimate goal of the National Legislation Program is the realization of a national legal system that guarantees justice and welfare of the people with the ideals of the proclamation, the goals of the State, and the 1945 Constitution (Utrecth, 1996).

However, based on empirical facts, the existing patterns and mechanisms have not been able to produce satisfying results because the good enough concept has not been effectively implemented. Therefore, the urgency of compiling Prolegnas through one door at this time becomes urgent to be carried out based on the following considerations and reasons (Riswanto, 2016):

1) The large number of Prolegnas made outside the existing mechanisms and procedures will only disrupt and spoil the existing system.
2) The tendency for the preparation of Prolegnas through many doors will trigger the emergence of ego and sectoral agility in the submission of the bill which, on the one hand, is not oriented to the legal needs of society. This in the end can trap us into acts of corruption.
3) There was an overlap in the law formation program due to coordination in the preparation of the National Legislation Program.
4) It can create a heavy burden for both the DPR and the government itself. In practice, there is a tendency for the bill to be launched as arrears that must be settled outside the priority year.
5) The waste of the State budget is caused by the drafting of a bill carried out by more than one proponent with their respective members.

Besides, we still often see the existence of laws whose contents are canceled by the Constitutional Court vertically inconsistent with the Constitution or horizontally overlap with other laws. This fact can be supplemented by the results of a study conducted by a team formed by the Indonesian Parliament.

The team found four main problems in the legislated field: firstly, the quality of the resulting law was inadequate so it lacked direct benefits for people's lives. Secondly, the target for the number of resolutions of bills set in the National

Legislation Program has not been fulfilled yet. Thirdly, the discussion of the Draft Bill is not transparent so it is difficult to access by the public. Fourth, there is still a weak level of coordination among the council's tools in the preparation and discussion of a bill.

If judging since Indonesia's independence, there is no consistency in what direction the legal development program will be, such as:

1) During the Sukarno administration, the direction of the legal program was shown to replace colonial law
2) During the Soeharto government the direction of the program was aimed at economic development, in addition to replacing colonial laws and regulations that were formed during the Soekarno era.
3) After the Suharto government, the direction of the law became increasingly uncertain because each government seemed to have an interest.
4) The national legislation program is not heeded.
5) Prolegnas is increasingly meaningless if there is a desire from abroad for a law
6) The more Indonesia depends economically on international financial institutions or developed countries, the more it will be undermined by its legal sovereignty.
7) If during the Soeharto era there was a statement about changing the minister to replace the policy, then at the moment there is an impression of changing the president to change the policy, including the priority of establishing the law.
8) Many laws are made very sectoral ego of the department
9) The law has not yet been made to meet the needs of the community and to pay attention to the existing infrastructure in various parts of Indonesia.

Therefore, from so many weaknesses that occur in the preparation of National Legislation Program, regardless of the institutions involved, President Jokowi with his legal reform agenda tries to break the new form of forming an institution or a ministry-level body under the direct command of the President of the Republic of Indonesia deal with everything related to legislation.

2. Regulatory Obesity

At the same time, the legislation also recognizes the enactment of customary law and Islamic law. Therefore, politics of law in legal reform is implemented to encourage legal reform policies that lead to the replacement of colonial inheritance laws, and the adoption of very diverse customary law and Islamic law into positive state law (Maryanto, 2012).

Meanwhile, the provisions of international law created due to the entry of Indonesia as a member of international, regional and or bilateral cooperation organizations and the ratification of various treaties and relating to human rights also have implications for the state's obligations to make laws, even as well as obligations to harmonize the principles of national law that we have with the international instruments we are related to.

The legal pluralism is also augmented by the development of regional regulations (Perda) as a result of the implementation of regional autonomy as well as written rules outside the order of the law. Where the provisions in these regulations emphasize the role and power of state institutions (including regional government) informing and interpreting written law to achieve the goals of the institutions (Mattalatta, 2009).

Indonesia is a legal country and an important element to support this is the laws and regulations that govern all aspects of national and state life. The regulation was made solely for the benefit of welfare and public interest. In the Indonesian context, the number of regulations currently reaches 42,996 with the breakdown of central regulations of 8,414, ministerial regulations of 14,453, regulations of non-ministerial government institutions 4,164, and regional regulations of 15,965. Supposedly, the more the number of regulations or existing laws and regulations, the higher the level of welfare. However, quite a lot of regulations lead to regulatory obesity resulting in slow performance to achieve prosperity (Triningsih, 2017).

II. NATIONAL REGULATORY AGENCY

The duties of the National Regulatory Body are as follows:

1) Representing the government to prepare Prolegnas in the DPR.
2) Representing the government filed a bill in the Parliament outside the National Legislation Program.
3) Drafting the draft of a bill from the President.
4) Harmonize, round up, and solidify the concept of the Bill from the President.
5) Representing the President coordinating the discussion of the Bill in the DPR.
6) Drafting Government Regulations.
7) Harmonize, round up, and solidify the draft Government Regulation Draft.
8) Harmonize, round up, and solidify the draft Presidential Regulation draft.
9) Harmonize, round up, and solidify the concept of the draft provincial regulation.

10) Translating laws and regulations into foreign languages. Monitor and review the implementation of laws representing the government.

Actually, before the existence of the National Regulatory Agency, there was a National Regulatory Body (BRN) which had the same functions and duties as the National Legislation Center. The National Regulatory Body (BRN) is a government agency tasked with fostering an integrated and comprehensive national legal system from planning to analysis and evaluation of laws and regulations. BRN is a continuation of the National Legal Development Institute (LPHN) formed by the government in 1958.

The task of BRN is to carry out efforts to improve and perfect national law, among others, by updating the codification and unification of law in certain fields by paying attention to legal awareness in the community. While its functions include: (a) Fostering the holding of scientific meetings in the field of law, (b) fostering research and development of national law, (c) fostering drafting of draft codification laws (d) fostering documentation centers.

If it is observed, the composition that will fill the new Agency will most likely be taken from institutions and bodies that have long been involved in and jurisdiction with legislation. Like BRN, the State Secretary and the Ministry of Home Affairs, which collects regulations from various regions.

CONCLUSION

One of the substances in Law number 15 of 2019 concerning Formation of Regulations and Regulations is the existence of institutions that conduct government affairs in the field of the formation of legislation. The agency in the Amendment to the PPP Act, among others, has the function or task of coordinating the preparation of Prolegnas within the Government, coordinating the planning of the drafting of PPs, coordinating the harmonization, rounding up, and consolidating the conception of a draft bill originating from the President, coordinating the preparation of deliberations for the Draft Bill with the Parliament, coordinating the harmonization, rounding up, and consolidating the conception of the bill originating from the President and strengthening the conception of the RPP, coordinating the harmonization, rounding and consolidation of the draft Perpres, enacting legislation in the Official Gazette of the Republic of Indonesia or the Official Gazette of the Republic of Indonesia. Hopefully in the future with the existence of special institutions that are given more power and authority to oversee national legislation, national law will be more advanced and developed. The overlap between laws will no longer be found.

Coordination between institutions is easy so that it makes it easier and more effective for budget and performance to be more focused. With the existence of this new institution, it is not even an institution that complicates the enforcement and development of existing laws in Indonesia.

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QUOTE

"Under a system in which no single question is submitted to the electorate for direct decision, an ardent minority for or against a particular measure may often count for more than an apathetic majority."

Patrick Devlin
The Enforcement of Morals

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