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TECHNIQUES FOR DESIGNING REGULATIONS AND LEGISLATION

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ABSTRACT

Legislative regulations are written regulations formed by state institutions or authorized officials and are generally binding. In realizing national legal development policies, especially statutory regulations and realizing the orderly formation of statutory regulations by paying attention to general principles and the hierarchy of statutory regulations, Law Number 15 of 2019 concerning the formation of statutory regulations has been promulgated. However, looking at the aspect of the development of legislative regulations from year to year, it can be felt that there are weaknesses in the law and there are several other issues that are why the law is often subject to judicial review. To overcome this, it is necessary to evaluate the drafting of future legislation and the need to respond to various developments in state and government life as well as the dynamics occurring in society and so on.

Keywords: ***Legislation, Law no. 15 of 2019, Govt.***

A. Discussion

Drafting of legislative regulations/Legal drafting can be interpreted as the process of preparing regulation-making activities starting from planning, preparation, drafting techniques, formulation, discussion, ratification, promulgation and dissemination. Legislative regulations consist of various types which also form a hierarchy of statutory regulations. All types of legislative regulations are designed or formulated by the legislative power together with the executive power. Thus, the ability or expertise in drafting legislative regulations is a must for government officials in these two institutions. Moreover, the scope of duties and authority is always related to the public interest.

However, various reports show that there are still many legislative regulations at both the central and regional levels that are problematic, even contradictory to each other. This is due to the fact that there are still many draft legislative regulations that ignore sociological aspects and public or community participation in designing a new regulation which could later cause difficulties in its implementation and could even have fatal legal implications.

The 1945 Constitution underwent four fundamental changes in a relatively short time. The People's Consultative Assembly is given the authority to amend and enact the 1945 Basic Law, as a manifestation of the people's desire to carry out reform in the field of law. The changes to the 1945 Constitution greatly affected the mechanisms of state administration and government affairs, as a result, various state institutions were required to make improvements regarding their functions to adapt to these changes. Not only does it influence the mechanisms of state administration and government affairs, but it also changes the power to form laws from being previously held by the president to the authority of the House of Representatives. Thus, structuring the implementation of its functions will have an influence on the quality of law formation in Indonesia. Steps towards the formation of quality laws, as part of efforts to support legal reform, have been implemented through the National Legislation Program (Prolegnas).

These improvement efforts concern the formation process (formal) as well as the regulated substance (material). This step can provide assurance that the laws formed are able to accommodate various needs and rapid changes in the implementation of development. Laws are the legal basis on which the implementation of all policies made by the government is based. "Legal

policy" as outlined in law, becomes a means of social engineering, which creates policies that the government wants to achieve, to direct society to accept new values. In a country based on modern law (verzorgingsstaat), the main aim of forming laws is no longer to create codification of the norms and values of life that have already settled down in society, but the main aim of forming laws is to create modifications or changes in people's lives.

Currently, the law provides a juridical form for social intervention carried out by its creators to realize the ideals and goals of the state. Laws now no longer primarily function to provide a form of crystallization of the values that live in society, but rather provide a form for political action that determines the direction of the development of these values. In the description above, on this occasion the author will create a Law Formation Process in Indonesia. What is Process, according to the Big Indonesian Dictionary. The definition of process is a series of actions. So the process of forming a law is a series of actions in forming a statutory regulation. A series of how these regulations are carried out and there must be procedures for implementing them.

B. Formulation of the problem

Based on the background that has been explained, the author takes the problem as follows:

1. What is the process of forming laws?
2. Why does the formation of a law have to have a legal basis?

C. Research methods

Legal research methods are guidelines or guidance in conducting research and presenting arguments on problems and legal reasoning in problems and linking a problem in terms of aspects of legal theory, legal philosophy or legal sociology into research and the importance of applying a theory of scientific truth or theory in research. Pragmatic truth, why is that, because the coherence theory of truth relies on the truth of a decision (proposition) which is true if it is derived (derivative) in the right way or linked to its systematic context, whereas the pragmatic theory of truth relies on the decision or proposition is true, if the decision or proposition fulfill its function or satisfy the user. In this theory, truth also rests on the agreement of the members of a scientific community (consensus). In other words, if the theory among people gains enough approval, then this theory will be considered true. This research uses a nomative research method where normative research relies on legal arguments put forward by researchers and applies all regulations, literature and decisions as external requirements for research.

D. Discussion

A. Law Formation Process

The definition of legislation in Indonesian positive law is stated in Article 1 point 2 of Law Number 15 of 2019, which states that "Legislative Regulations are written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or officials authorized person through the procedures stipulated in the Legislative Regulations".

Formation of Legislative Regulations is the creation of Legislative Regulations which includes the stages of planning, drafting, discussing, ratifying or determining, and promulgating (Article 1 point 1 of Law 15 2019). In forming Legislative Regulations, this must be done based on the principles of forming good Legislative Regulations, which include:

a. clarity of purpose
b. appropriate institutions or forming officials
c. correspondence between types, hierarchies, and content materials
d. can be implemented

e. usefulness and usefulness
f. clarity of formulation
g. openness

The content of the Legislative Regulations must reflect the following principles; protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality of position in law and government, legal order and certainty, and/or balance, harmony and harmony. Apart from reflecting these principles, certain Legislative Regulations may contain other principles in accordance with the legal field of the relevant Legislative Regulations. The matters mentioned above are contained and regulated in chapter II of the principles for the formation of statutory regulations, articles 5 and 6 of Law No. 15 of 2019 concerning the Formation of Legislative Regulations.

1. Tradition of the Rule of Law in the Meaning of Rechtsstaat

A rule of law means a state that stands above the law and everything is regulated by law and carried out according to law. A rule of law or state based on law is a state whose government, society and people always prioritize and enforce the law with legality in the sense of law in all its forms. Viewed from the perspective of its development, the rule of law in the sense of the Rechsstaat which has grown and developed in continental Europe can be sorted into three types of state of law, namely the liberal state of law, the formal state of law and the material state of law.

a. Liberal Law Country

In a liberal style of government, the rule of law state is also called a Liberal Law State (Liberale Rechtsstaat). The pioneer was Prof. Immanuel Kant (1724-1804) who proposed the main characteristics:

1) protection of human rights
2) separation of powers. Over time, the state cannot only maintain order, but must also strive for prosperity. In line with the increasingly complex situation of society and the greater demands of society, individuals are no longer able to overcome problems involving public interests or facilities such as building roads, bridges, irrigation, and so on. To address public interests or facilities, the authorities need money, which is collected from taxes based on law, then the state creates a budget.

b. Formal Legal State

Because the authorities in collecting taxes or transporting public goods require the people's consent, not solely based on the will of the authorities, they must be based on law. This means that everything carried out by the authorities (government) and those controlled (the people) is based on law. In such cases, the state acts formally. This gives rise to a Formal Legal State (Formele Rechtsstaat), because in all actions the ruler requires a certain formal form of law or formal legal form. The pioneer was Friedrich Julius Stahl (1802-1861) who proposed the main characteristics:

1) the protection of human rights,
2) there is a division of power,
3) existence of government based on law, and
4) the existence of administrative justice.

c. State of Material Law

State of Law in a broad sense or State of Material Law (Materiele Rechtsstaat), because this State of Law prioritizes material things in the sense of prosperity. This rule of law is also called the rule of law of prosperity because what is important in its content is the prosperity of the people. Material Law State or Prosperity Law State contains the following main characteristics:

1) there is a guarantee of protection of human rights,

2) there is a separation of powers,
3) existence of government based on law,
4) the existence of a state administrative court,
5) there is prioritization of the benefits of state administration, and
6) the existence of government promotes people's prosperity. Connected with the three features of the State of Law (Liberal State of Law, Formal State of Law, and State of Material Law) above, the Indonesian State of Law based on the Pancasila Grundnorm and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is included in the State of Material Law or State Law of Prosperity.

2. Momentum

Before designing a regulation or law, we should pay attention to the following four design moments:

a. Ideal/ideal momentum: that this momentum forms laws by laying a philosophical foundation based on the philosophy of the Indonesian nation, namely Pancasila (Article 2 of Law No. 15 of 2019 concerning the formation of statutory regulations). Notonegoro stated that there are three fundamental values related to the value of the Pancasila philosophy, namely Material (related to the human element)
b. Vital Values (everything that is useful for human activities)
c. Spiritual Values (Truth, Kindness & religion).
d. Aspirational Momentum: This momentum is the obligation of legislators (Central DPR/DPRD) to absorb the aspirations of the community in the context of forming laws. This momentum is substantial in nature, not a formality.
e. Normative Momentum: This momentum is very central in the context of formulating legal norms which must reflect justice, expediency/utility and legal certainty. These three things must be considered so as not to cause vague norms and conflicting norms because vague norms will lead to ambiguity.
f. Technical Momentum: This momentum is legal drafting which must be carried out by experts in their field and must be able to create an outline.

The four moments above are very important before drafting legislative regulations because these four moments must be looked at, thought about and implemented carefully so that after the legal regulations are formed, one of the above moments is ignored. Ideal momentum is the source of the formation of legislation that refers to philosophy or in this case Pancasila, in making legislative regulations it should not conflict with the ideology of the Indonesian nation as stated in Pancasila.

In forming a new regulation, aspirational momentum is considered important because it is able to listen to aspirations and complaints that occur in society. As said above, aspirational momentum is substantial in nature, not a formality, meaning that this momentum is very important and serious and cannot be underestimated in implementing it.

Norms have an important role in the formation of new regulations, in this case they must reflect justice, usefulness and legal certainty for the community so that later they do not give rise to unclear norms which can become holes in a regulation itself. It should be carried out by experts in their respective fields so that they are truly able to understand the new regulations that will be made which will ultimately lead to justice, benefit/utility and legal certainty for the wider community.

3. Legislative Framework

Every law, whether it has been passed or is still in the form of a draft law, has parts that are arranged in a neat framework system, namely:

a. Title

1) Contains information regarding the type, number, year of promulgation or enactment and the name of the Legislative Regulations.
2) The title of the law is made concise, short, clear and concise and reflects the contents of the law.
3) Written with capital letters placed in the middle position and without ending punctuation.

b. Opening

1) The phrase "By the Grace of God Almighty".
2) Position of Regulator/Legislator.
3) Precautions.
4) Legal basis.
5) Dictum.

c. Torso

1) General requirements
2) The main material regulated
3) Criminal Provisions (if necessary)
4) Transition provisions (if necessary)
5) Closing

d. Closing

1) Explanation (if any)
2) Attachments (if any)

The title of the Legislative Regulation contains information regarding the type, number, year of promulgation or stipulation, and the name of the Legislative Regulation. The name of the Legislative Regulation is made briefly and reflects the contents of the Legislative Regulation. The title is written entirely in capital letters placed in the middle of the margin without punctuation. In the title of the amended Legislation, the phrase amendment is added before the name of the amended Legislation and in the title of the repealed Legislation, the word revocation is inserted in front of the name of the repealed Legislation.

At the opening of each type of Legislative Regulation, before the name of the position forming the Legislative Regulation, the phrase "WITH THE GRACE OF GOD ALMIGHTY" is included, written entirely in capital letters placed in the middle of the margin. The position of the maker of Legislative Regulations is written entirely in capital letters placed in the middle of the margin and ends with a comma. The consideration begins with the word Consider. The Precautions contain a brief description of the main ideas that form the background and reasons for making Legislative Regulations. The main ideas in the preamble to a law or regional regulation contain philosophical, juridical and sociological elements which form the background for its creation.

The main points of thought which only state that Legislative Regulations are considered necessary to be made are inappropriate because they do not reflect the background and reasons for making these legislative regulations. If the considerations contain more than one main idea, each main idea is formulated in a series of sentences that form a unified meaning. Each main idea begins

with a letter of the alphabet, and is formulated in one sentence that begins with the word that and ends with a semicolon.

The legal basis taken from the articles in the 1945 Constitution of the Republic of Indonesia is written by mentioning the related article or several articles. The phrase of the 1945 Constitution of the Republic of Indonesia is written after the mention of the last article and the two letters "U' are written with capital letters. The dictum consists of the word Decide, the word Determine and the Name of the Legislative Regulation. The word Decide is written entirely in capital letters without spaces between syllables and ends with a colon and placed in the middle of the margin. In Regional Regulations, before the word Decide, the phrase "With the Joint Approval of the REGIONAL COUNCIL OF REPRESENTATIVES... (name of region) and GOVERNOR/REGENT/WALIKOTA... (name of region) is included, written entirely in capital letters and placed in the middle of the margin.

General provisions are stated in the first chapter. If the Legislative Regulations do not group chapters, the general provisions are placed in the initial articles. General provisions may contain more than one article. The opening phrase in the general provisions of the law reads: In this Law what is meant by: The opening phrase in the general provisions of the Legislative Regulations under the Law is adjusted to the type of regulation. If the general provisions contain restrictions on the meaning or definition of more than one abbreviation or acronym , then each description is given a sequential number with Arabic numerals and begins with a capital letter and ends with a period of punctuation.

The words or terms contained in the general provisions are only words or terms that are used repeatedly in subsequent articles. If a word or term is only used once, but the meaning of the word or term is required for a particular chapter, section or paragraph, it is recommended that the word or term be given a definition. If a limitation of meaning or definition needs to be quoted again in the general provisions of an implementing regulation, then the formulation of the limitation of meaning or definition in the implementing regulation must be the same as the formulation of the limitation of meaning or definition contained in the higher regulation being implemented. Because the definition or definition, abbreviations or acronyms function to explain the meaning of a word or term, the definition or definition, abbreviation or acronym does not need to be explained, and therefore must be formulated in such a way that it does not give rise to double meaning. The regulated main material is placed directly after the general provisions chapter, and if there is no grouping of chapters, the regulated main material is placed after the general provisions articles.

The division of the main material into smaller groups is carried out according to the criteria used as the basis for the division. Criminal provisions contain formulations that state the imposition of criminal penalties for violations of provisions containing prohibitive norms or orders. In formulating criminal provisions, it is necessary to pay attention to the general principles of criminal provisions contained in Book One of the Criminal Code, because the provisions in Book One also apply to acts. which can be punished according to other laws and regulations, unless otherwise provided by law (Article 103 of the Criminal Code).

In determining the length of the sentence or the amount of the fine, it is necessary to consider the impact caused by the criminal act in society. The criminal provisions are placed in a separate chapter, namely the criminal provisions chapter which is located after the main material regulated or before the transitional provisions chapter. If there is no transitional provisions chapter, it is located before the closing provisions chapter. If the Legislative Regulations do not provide chapter-by-chapter grouping, the criminal provisions are placed in the article which is located

directly before the articles containing transitional provisions. If there is no article containing transitional provisions, the criminal provisions are placed before the closing article.

Criminal provisions are only contained in Regional Laws and Regulations. Transitional provisions contain adjustments to the existing Legislative Regulations when the new Legislative Regulations come into force, so that the Legislative Regulations can run smoothly and do not cause legal problems. Transitional provisions are contained in the transitional provisions chapter and placed between the criminal provisions chapter and the Closing Provisions chapter.

If there is no grouping of chapters in the Legislative Regulations, the article containing transitional provisions is placed before the article containing closing provisions. When a Legislative Regulation is declared to come into force, all existing legal relations or legal actions that occur either before, during or after the new Legislative Regulation is declared to come into force are subject.

Concluding provisions are placed in the last chapter. If there is no chapter grouping, the closing provisions are placed in the last chapters. In general, the closing provisions contain provisions regarding the appointment of organs or equipment implementing the Legislative Regulations, short names, status of existing Legislative Regulations and when the Legislative Regulations come into force. The Conclusion is the final part of the Legislative Regulations and contains:

a. Formulation of orders for promulgation and placement of Legislative Regulations in the State Gazette of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Regional Gazette, or Regional Gazette
b. Signing of ratification or stipulation of Legislative Regulations
c. Promulgation of Legislative Regulations
d. End of closing section

Legislative Regulations under the Act may be explained, if necessary. The explanation functions as an official interpretation for the makers of Legislative Regulations regarding certain norms in the body. Therefore, the explanation only contains a further description or elaboration of the norms regulated in the body.

Thus, explanation as a means of clarifying norms in the body must not result in unclearness of the norms being explained. The explanation cannot be used as a legal basis for making further regulations. Therefore, avoid formulating norms in the explanation section.

In the event that a Legislative Regulation requires an attachment, this must be stated in the body and a statement that the attachment is an inseparable part of the relevant Legislative Regulation. At the end of the attachment, the name and signature of the official who ratified/established the relevant Legislation must be included.

4. Academic Manuscript

The process of preparing an Academic Paper consists of several stages, the first stage begins with preparation, the implementation stage of preparing the Academic Manuscript, public discussion of the initial draft of the Academic Manuscript, evaluation of the draft of the Academic Manuscript, refinement or finalization of the preparation of the Academic Manuscript, and submission of the Academic Manuscript to the regional government and Regional Representative Council as input in the process of forming regional regulations.

The preparation stage for preparing Academic Papers begins with forming a Regional Regulation Academic Paper Drafting Team, consisting of personnel who are considered to have

competence and broad insight in their field. The personnel composition of this team is adjusted to the needs and main issues for which regional regulations will be made.

The competency of the Team members is not solely in the legal field, but it would be better if they involved experts from various scientific disciplines related to the problem to be studied. The competence of members from the discipline of law and legislation is needed to examine legal rules and patterns of designing legislative regulations. At this preparatory stage, activities are carried out involving technical aspects of the Team as well as collecting data and information relevant to the main issue.

The next stage is the preparation of a draft Academic Manuscript in accordance with the standard patterns and systematics usually used in preparing Academic Manuscripts. This stage requires sufficient time, because apart from pouring various data and information into the form of an Academic Manuscript, alternative rules or norms for the narrative being prepared are also being considered. The drawing of legal rules/norms is what differentiates academic manuscripts from ordinary research/study results.

If the draft Academic Paper has been prepared, the next stage is to hold a public discussion (public hearing). The aim of this public discussion, apart from presenting/informing the Academic Manuscript to the public and related parties, is also to gather input from various parties, in order to enrich and perfect the Academic Manuscript. This public discussion can take the form of a focused discussion, workshop, seminar, public aspirations net, consultation meeting, or also publish it in the mass media.

Evaluation of the draft Academic Manuscript needs to be carried out after obtaining input or responses from the community. At this stage, the Academic Manuscript Drafting Team begins to inventory the input obtained from public discussions and accommodates useful input as far as possible into the Academic Manuscript.

Next, the Academic Paper Drafting Team perfects and determines the final draft of the Academic Paper, to be submitted to the regional government and/or DPRD, as input and consideration in the discussion.

The Academic Paper consists of two parts, namely (1) the part which contains the results of the material study of the Bill to be proposed and (2) the part which contains the Preliminary Text of the proposed Bill.

a. First Part Format
   1) Front Cover/Cover, contains the title and organizer of the Academic Manuscript.
   2) Foreword, which contains an introduction to the process of preparing an Academic Manuscript.
   3) List of contents
   4) Chapter I Introduction
   5) Background
      Contains thoughts about considering facts which are important reasons for the legal material in question which must be regulated immediately.
   6) Rationale for the Need for a Bill
      Contains ideas about the basis for the need for a bill to be formed, including philosophical grounds, sociological grounds, juridical grounds, psychopolitical grounds and economic grounds.

7) Purpose and objectives
State what is to be achieved through the formation of the bill (for example providing a guarantee of legal certainty)

8) Approach Method
9) Positive Legal Analysis Related to the Legal Material of the Bill
The Academic Paper contains recommendations regarding urgency (the rationale for the need for a statutory regulation), conception, legal principles, scope and content material, complemented by thoughts and conclusions about norms that will serve as guidance in preparing a draft statutory regulation. The existence of an Academic Manuscript is not (or until now has not been explicitly regulated) a necessity in the process of forming statutory regulations, however the existence of an Academic Manuscript is very necessary in the process of forming regional regulations. Academic texts explain the reasons, facts or background regarding matters that encourage the preparation of a problem or affair so that it is considered very important and urgent to be regulated in regional regulations or laws.

On a sociological basis, academic texts are prepared by examining the reality of society which includes the legal needs of society, socio-economic aspects and living and developing values (sense of social justice).

The aim of this sociological study is to avoid uprooting the laws and regulations that are made from their social roots in society. The large number of laws and regulations which, after being promulgated, are then rejected by society, is a reflection of laws and regulations that do not have strong social roots.

The existence of Academic Manuscripts is indeed very necessary in the context of forming legislative regulations with the aim that the resulting legislative regulations will be in accordance with the national legal system and community life. By using Academic Manuscripts in the process of forming statutory regulations, it is hoped that the resulting legislative regulations will not face problems (for example, requests for judicial review) in the future.

B. The Formation of Laws Has a Legal Basis

According to Lon L Fuller, one of the requirements for the successful formation of Legislation is that the law must be published and those who are interested in the legal rules that must be announced must be able to know the contents of these rules. According to Prof. Hamid Attamimi can be used as principles.

On the other hand, people who will be bound by statutory regulations have the right to know and understand the statutory regulations. So that binding power and community knowledge become interrelated elements. Ideally, people are bound or subject to the rules when they know them. To fulfill this condition, it is the obligation of legislators and the government to carry out activities aimed at informing the public about the existence of a statutory regulation.

The drafting of legislation must have a strong legal basis in terms of the aspects of its creation and application in people's lives so that there is no overlap between the drafting of previous legislation and does not leave aside new legislation. And have a strong identity when implementing the law. Legislation must be promulgated as it should be, and if the legislation is not promulgated, it will not have general binding force, so that a Judicial Review can be submitted to the Supreme Court or MK.

E. Closing

Conclusion

1. The design of legislative regulations must look at the four moments described above because these moments are very important for the creation of good and useful regulations for the general public. If the draft legislation is later ratified as law, of course we hope that it can beneficial for social life and reflects justice in accordance with the objectives of the law itself.
2. The drafting of legislation must have a strong legal basis in terms of the aspects of its creation and application in people's lives so that there is no overlap between the drafting of previous legislation and does not leave aside new legislation. And have a strong identity when implementing the law.

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