

Conceptual Article

The Making of Law in Indonesia: A Criticism and Evaluation of The Practise of Legislative Function in The House of Representatives

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ABSTRACT

The House of Representatives is a state institution that functions in the field of legislation. The current fact is that the DPR's performance in the field of legislation always gets records, because the resulting Law is still below Prolegnas target. On the basis of the problems as referred to, the writing of this article aims to find out what the problems and the efforts that need to be made in overcoming the problem of the formation of laws which fall under the authority of the DPR are. In the discussion, the author tries to provide criticism aimed at the process of forming a law in the DPR, seen from three indicators, namely from the legal substance factor, the legal structure factor and the legal culture factor, the legal substance relating to the current Law does not regulate the maximum number of Prolegnas, the legal structure related to law-forming institutions originating from political parties, and the legal culture related to community rejection of the bill being discussed. The solution to these 3 (three) problems needs to be changed, such as strengthening regulations regarding restrictions on performance-based Prolegnas submissions, making Integrity Facts for DPR members and regulations governing public involvement in making laws stronger, this needs to be done in order to keep it up. maintain the level of public trust in the DPR in carrying out its legislative functions.

Keywords: Legislative Power; Making Laws; Politics in Law.

ABSTRAK

Kinerja Dewan Perwakilan Rakyat (DPR) sebagai pemegang kekuasaan legislatif di Indonesia masih belum memenuhi target Prolegnas. Jumlah Undang-Undang memperlihatkan yang telah disahkan oleh DPR jauh lebih sedikit dibandingkan jumlah Rancangan Undang-Undang (RUU) yang ditargetkan dalam Prolegnas. Penulisan artikel ini bertujuan untuk membahas apa yang menjadi permasalahan dan upaya mengatasi permasalahan pembentukan Undang-Undang yang menjadi kewenangan DPR. Hasil pembahasan, bahwa proses pembentukan undang-undang di DPR, dilihat dari tiga indikator yakni dari faktor substansi hukum, faktor struktur hukum dan faktor kultur hukum, substansi hukum berkaitan dengan Undang-Undang yang ada saat ini tidak mengatur mengenai batas jumlah maksimal Prolegnas, Struktur hukum berkaitan dengan lembaga pembentuk Undang-Undang yang berasal dari partai politik, dan kultur hukum berkaitan dengan penolakan masyarakat terhadap RUU yang sedang dibahas. Rekomendasi, perlu dilakukan suatu perubahan seperti memperkuat pengaturan mengenai pembatasan pengajuan Prolegnas yang berbasis kinerja, membuat Pakta Integritas bagi anggota DPR dan regulasi yang mengatur mengenai keterlibatan masyarakat dalam membuat Undang-Undang dapat diperkuat. Hal demikian perlu dilakukan guna tetap menjaga tingkat kepercayaan publik kepada DPR dalam menjalankan fungsi legislasinya.

Kata Kunci : Kekuasaan Legislatif; Pembentukan Hukum; Politik Hukum.

A. INTRODUCTION

Philosophically, the process of law making in Indonesia is the embodiment of a legal state (Patawari, 2019), and also as the state's responsibility to realize the welfare of the people. This is derived from the definition of a welfare nation in general, which is a set of state's actions to issue various legal policies whose arrangement substance aims to protect the people by regulating the life of the people (Lindbeck, 2006).

Policies made by the state in regulating people's life are stated in various legal regulations formed by state institutions which has legislative function according to legal rules set (Dalimunthe, 2017). One of the policies is legal regulation in the form of Laws made by The House of Representatives (hereinafter referred to as DPR), a state institution which has legislative function or in other words an institution that makes and passes laws (Siahaan, 2012).

Judicially, technical arrangement of the process of Law formation in DPR has been regulated explicitly in Law Number 12 Year 2011 in conjunction with Law Number 15 Year 2019 concerning The Amendment of Law Number 12 Year 2011 concerning Establishment of Laws and Regulations (Qmar, 2020). In this Law, it is clearly stated that the making of Laws and regulations in DPR covers several stages: planning, preparation, drafting techniques, formulation, deliberation, ratification, endorsement, enactment, and dissemination (Fitriana, 2015).

However, in practice, the Process of Law Making in DPR is currently problematic. The problem lies in DPR's low productivity in making laws. The products of law passed by DPR never reach the target set in Prolegnas (National Legislation Program) as legal politics of the State of Indonesia.

As for example, DPR in period 2014-2019 has established as many as 189 Bills into Prolegnas with 54 Bills among them in cumulative Prolegnas. However, from the total of 189 Bills targeted, only 90 Bills were officially passed to become Laws (DPR, 2019).

Based on those data, the question arises is what causes the process of law making in DPR not productive? There are many factors which cause the failure of the implementation of Prolegnas during the working period of DPR from 2014 to 2019 as found by previous research by Ratnia Solihaha and Siti Witianti who investigated the implementation process of legislation function (Solihah, & Witianti, 2016). In her study, Solihah and Witianti stated that the DPR's failure to meet Prolegnas target was caused by some factors consisting of experience of DPR member, lack of coordination among the members of DPR, and authority degradation of legislative body after the revision of Law Number 27 Year 2009 concerning MPR (People's Consultative Assembly), DPR (The House of Representatives), DPD (Regional Representative Council of Indonesia), and DPRD (Regional House of Representative) into Law Number 17 Year 2014.

In addition to research conducted by Solihaha and Siti Winanti, there is also a research by Agus

Riwanto in 2016. In his study, Agus Riwanto stated that the lack of DPR's productivity in making Laws is contributed by multi parties system. Still according to Agus Riwanto, aside from multi-party system, DPR's lack of productivity is due to the fact that DPR prioritized their oversight function toward the executive. Furthermore, lack of discipline of DPR members in time management has also become contributing factors of low productivity (Riwanto, 2016).

Adika Akbarrudin in his article also wrote that the obstacles of the practice of legislative function in DPR is caused by institutional problem, such as issue in administration system of the session, legislation result, budget, and supporting system which is still not optimal (Akbarrudin, 2013).

Oshua Segun in his article stated that the problem in the practice of legislative function of Nigeria's DPR was issues concerning corruption (Segun, 2014). The last study is by Rogelio Alicor L. Pano who stated that the problems in the practice of legislation in Philippine was because the executive had big power to make laws (Pano, 2014).

This study has substantive difference from the previous studies. This article criticizes DPR's legislative function in Indonesia using three indicators: legal structure factor, legal substance factor, and legal culture factor in legal system in Indonesia. Therefore, this criticism was built based on the theory of legal system as stated by Lawrence M. Friedman (Friedman, 1975). From the criticism, the author formulized some recommendations

regarding the effort to make improvement in legal structure, legal substance, and legal culture.

B. DISCUSSION

1. Legal Substance Problem in the Making of Law

Legal substance in this study focused on regulation aspect which regulates the process of law making. As mentioned previously, the process of law making, in its practice, consists of stages, and its mechanism is stipulated in Law Number 12 Year 2011 in conjunction with Law Number 15 Year 2019 concerning Amendment of Law Number 12 Year 2011 concerning Establishment of Laws and Regulations.

The problem concerning legal substance influencing the productivity of DPR in making laws and regulations is associated with the process of Prolegnas Submission. There is no specific number of ideal limits of a Bill which is submitted to Prolegnas. Ideally, according to Prof Mahfud MD, in Prolegnas stipulation and submission, the holders of legislative power must take into account the some aspects as the basis of its submission (Maryanto, 2011). First, the stipulation of Prolegnas needs to consider the realization of integration or national unity ideologically and in territory. The second, Prolegnas needs to consider the attempt to build democracy (people sovereignty) and nomocracy (legal state) simultaneously. Furthermore, the stipulation of Prolegnas needs to consider social justice for all people of Indonesia and the realization of the principle of civilized tolerance of religions.

In Indonesia itself, the basis of Prolegnas submission has been regulated in Article 18 Law Number 12 Year 2011 in conjunction with Law Number 15 Year 2019 concerning Amendment of Law Number 12 Year 2011 concerning Establishment of Laws and Regulations. In this article, the process of Prolegnas submission is based on the mandate of The 1945 Constitution of The Republic of Indonesia, Decree of People's Consultative Assembly, National Development Planning System, National Long Term Development Plan (hereinafter referred to as RPJPN), National Medium-Term Development Plan (hereinafter referred to as RPJMN), Government Work Plan, and DPR's Strategic Planning as well as the aspiration and the legal need of the people.

Based on the provision of article 18, it is clearly stated that the process of Prolegnas submission in Indonesia is not regulated explicitly, particularly details concerning ideal limit number of Bills that need to be submitted to Prolegnas. Thus, because there is no ideal limit in Prolegnas submission, every time DPR and The President submitted Bills to Prolegnas, the number of the Bills was always not proportional. Disproportionate of Prolegnas submission is used as an indication of the need to increase legislation budget. The need to increase the budget arises because of the high target of Bills that should be submitted to Prolegnas. This phenomenon is later called Law making project by President Joko Widodo (Jordan, 2017). This indicates that Law making has become like a project. The more Laws DPR submits to Prolegnas, the more legislation budget they need.

2. The Problem of Legal Structure in Law Making

The problem with legal structure arises when DPR as an institution in charge of legislation function also acts as political institutions in that the composition of DPR members comprises of members of political parties. This definitely will affect DPR productivity in Law making. Consequently, during the process of law making, there will be conflict of political interests among the members. Each member has their own agenda. This, in fact, has become the cause of why it is so hard for DPR to reach consensus during the process of law making affecting the time needed to pass the laws.

In addition, the fact that DPR, a legislative institution, has members who belong to political parties will result in shifting of approach in Law making. The purpose of Law making will no longer about work performance / productivity achievement, but it shifts to how the Bills can benefit their political parties. This indicates that nowadays in Indonesia there has not been neutrality in the making of laws as a legal product (Salam, 2015).

The elaboration of law making productivity problem in internal has been presented. Furthermore, the discussion will focus on the productivity problem of law making in terms of legal structure in relation to Government institution. Government (executive) and DPR (legislative) are two state institutions which have roles in law making (Fadli, 2018). Currently, productivity problem in law making is caused by argument or polemic between DPR and Government.

It is commonly known that legal products in Indonesia are political products. DPR holds

legislative power or authority and discussed every Bill with the government in order to reach mutual agreement. Meanwhile, the President has been given the right to propose laws to DPR. Thus, the ratification of a Bill into a law is a form of mutual agreement between Executive (Government) and Legislative institution (DPR) (Fitriana, 2015). This means that when DPR and Government (legal structure) as two law making institutions work on a Bill and cannot reach agreement of consensus, the process of legislation discussion in DPR will be affected.

3. The Problem of Legal Culture in Law Making

The third factor that contributes in DPR's lack of productivity in law making is Indonesian people culture factor. Culture factor arises in the form of turmoil that happens in the society as a response to the protest against a law which is being discussed by DPR, as for example, people protest against RKUHP (The Draft Bill on Criminal Code) which gained massive surge of protest from the people (Mustinda, 2019). Various protests by the people have hindered the process of Law making resulting in the output that is not as expected.

Some protests shown by people are considered relevant, considering that Indonesia is one of the countries whose people are the most plural in the world, in terms of ethnicity, culture, and religion so that making a law or a legal product that can be accepted by all people of Indonesia is almost impossible to be realized.

4. Improvement of DPR's Legislative Function from the aspects of Legal Structure, Substance, and Culture.

After discussing productivity problems in the process of law making in DPR viewed from the theory of The Nature of Law by Lawrence M. Friedmen, the next discussion concerns with what solution can be offered to solve those problems. In this section, the author suggests three solutions in order to solve the problems of DPR's lacking of productivity in law making. The solutions are as follows:

a. The Importance of The Regulation Concerning The Limit of Prolegnas Submission Based on Performance.

Prolegnas submission which is based on work performance is an effort to regulate the rules concerning the calculation of ideal number of Bills that need to be submitted to Prolegnas. The calculation must be based on DPR's productivity in law making in the previous period. This is intended to create effectiveness in achieving the target of Prolegnas considering that DPR as people representatives is not only in charge of legislation but also of budget oversight (Sunarto, 2016).

It is an urgency to regulate the ideal limit number so that DPR, in discussing a law can actually maintain the quality of the laws made without feeling the burden of having a number of Bills that are still waiting to be ratified. Principally, a policy can be effective and have good quality if the policy is made through a focused and strict process (Satria, 2015). This means that the less the number of Bills

submitted to Prolegnas is, the more focused and stricter the members of DPR in discussing a Bill.

Regulation concerning ideal number of law submitted is expected to be able to give guidance in making Prolegnas so that DPT can submit a proportional number of Bills that will be discussed in Prolegnas. In terms of regulation on minimum limit and maximum limit of Prolegnas submission, the author suggests that the submission of Prolegnas be measured from the performance effectiveness of previous DPR, as for example, if our of 100% Bills submitted to Prolegnas during the period of previous DPR only reaches target below 15%, the number of Prolegnas submission by DPR in the following period cannot be more than 80% of total Bills submitted by DPR in the previous period. Thus, maximal limit of Prolegnas submission for DPR in the new period is reduced by 20% from 100%.

As for example, if Prolegnas submission during DPR 2014-2015 period is set at 200 Bills, but in practice only fulfilled 100 Bills, DPR in the next period is not allowed to propose Prolegnas more than 180 Bills. However, the next question is what if DPR in the previous period has fulfilled more than 50% to 99% of Prolegnas submission? Then, it means Prolegnas submission in the next period will only be reduced by 10% from the total Prolegnas submitted. In addition, if Prolegnas is 100% fulfilled during the previous period, the target of the following DPR will be added by 20% out of the total of Bills submitted during previous period.

b. The Signing of Pact of Integrity for the Members of DPR Concerning Law Making.

Pact of integrity of integrity pact is a letter of statement which contains a pledge or an agreement (Ansari, 2016). In the context of this study, integrity pact is a pledge made by parliament members to work earnestly in performing their duties without having any personal or group interests particularly during the making of laws. It is necessary to make integrity pact due to the fact that all members of DPR are also the members of political parties. Thus, integrity pact is expected to make DPR work based on the interest of all the people of Indonesia, not based on the interest of certain groups of people.

Integrity pact is also made in order to maintain the commitment of DPR's members to fight for people's aspiration, considering the fact that recently there have been many DPR's members who were absent during the process of law making. This is definitely will negatively affect the process of law making itself and DPR's productivity in producing laws (Riswanto, 2016).

In order to make integrity pact works well, it is also necessary to regulate sanction over DPR's members who violate this pact. The regulation concerning the sanction and the types of sanction needs to be regulated in Rules of DPR. The author suggests the type of sanction that can be given is in the form of administrative or, for the worse case, reduction of compensation. The enforcement of this sanction will be done by The Court of Honor Council (MKD).

c. Enhance The People's Involvement in The Process of Prolegnas.

In this discussion, people's involvement in the process of Prolegnas stipulation is necessary so that the process of Prolegnas stipulation can be aspirational, and may reflect what the people desire. In addition, people's involvement in deciding which Bills need to be included in Prolegnas is also meant to minimize the chance of people's protest or disapproval for the Bills, which will be discussed by DPR. The protest or disapproval for the Bills may result in the delay of law making and affect DPR's productivity in making Laws.

Nowadays, in performing the process of law making in all level, not all citizens can involve. The involvement of the people is only represented by groups of Non Governmental Organizations (NGO). As a matter of fact, the Right to Participate of all element of society in the making of laws is a right whose existence is guaranteed International Covenant on Civil and Political Rights (ICCPR), which was passed on 16th December 1966, and later was ratified on 28 October 2005 in Law Number 12 Year 2005 by The Republic of Indonesia. Article 25 ICCPR and the Law have confirmed that each citizen has a right to participate in the implementation of public affairs, to vote and be voted, and to grant equal and fair access to serve in a public office in his/her country (Susilowati, 2017).

People's involvement in the process of law making needs to be accommodated by the state. As for example, in Italy, Article 71 Constitution of Italy stated that each individual (Laws initiators) can propose legislation by initially submitting Bill that he/she supports which is signed by at least fifty

thousand persons. This method can be employed by the government of Indonesia so that DPR and Government cannot arbitrarily propose a Bill in Prolegnas. The Bill which will be submitted to Prolegnas has to be agreed by the people of Indonesia first.

Another country that can be a good example in law making is Switzerland. The Constitution of the state of Switzerland has given veto right for its people in the form of referendum over all policies and decisions taken by parliament. Although Swiss A Parliament is the law maker, the people of Switzerland are given right to intervene Parliament Policies, covering policy of law making, policy of constitution amendment, and policy of becoming a member in an international organization (Ariyani, 2017).

C. CONCLUSION

Based on the discussion in this article, it can be concluded that the problem in the process of Law making in DPR is caused by legal substance, legal structure, and legal culture. Legal substance is related to existing Laws which does not regulate limit of maximal number laws that should be submitted in Prolegnas. Legal structure is related to law making institutions from political parties. Meanwhile, legal culture is related to people's protest against the Bills. The solution of these three problems is to make changes in three aspects such as strengthening the regulation concerning the limit of Prolegnas submission which is based on performance, making Pact of Integrity for the members of DPR. All the

regulations concerning the involvement of people in the making of Laws should also be strengthened in order to maintain the level of people's trust to DPR to perform their legislative function.

REFERENCES

JOURNALS

- Satria, Adhi P. (2019). Critical Analysis Of Criminal Measure In The Indonesian National Police. *South East Asia Journal of Contemporary Business, Economics and Law*, Vol.19, (No.5), pp.40-46.
- Akbarrudin, A. (2013) Pelaksanaan Fungsi Legislasi DPR RI dan DPD RI Pasca Amandemen UUD 1945. *Pandecta*, Vol.8, (No.1), pp 53-66
- Ansari, Muhammad. I. (2016). Penerapan Pakta Integritas pada Pengadaan Barang/Jasa untuk Mewujudkan Tata Kelola Pemerintah yang Bersih. *Kanun: Jurnal Ilmu Hukum*, Vol.18,(No.3), pp 385–401.
- Ariyani, N. (2017). Proses dan Prosedur Perubahan UUD di Indonesia 1945-2002 serta Perbandingannya dengan Konstitusi Negara Lain di Dunia. *Jurnal Kosmik Hukum*, Vol.17, (No.2), pp.119–135.
- Dalimunthe, D. (2017). Proses Pembentukan Undang-Undang Menurut UU No.12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Yurisprudentialia*, Vol.3,(No.1), pp. 66–82.
- Fadli, M. (2018). Pembentukan Undang-Undang yang mengikuti Perkembangan Masyarakat. *Jurnal Legislasi Indonesia*, Vol.15,(No.1), pp. 49–58.
- Fitriana, Kusuma M. (2015). Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan di Indonesia Sebagai Sarana Mewujudkan (Laws And Regulations In Indonesia As The Means Of Realizing The Country's Goal). *Jurnal Legislasi Indonesia*, Vol.12,(No.2), pp. 1–27.
- Panao, Rogelio Alicor L. (2014). Beyond roll call: executive-legislative relations and lawmaking in the Philippine House of Representatives, *Philippine Political Science Journal*, Vol.35, (No.1), pp. 59–77
- Maryanto. (2011). Urgensi Pembaharuan Hukum Indonesia Berdasarkan Nilai-nilai Pancasila. *Jurnal Hukum Unissula*, Vol.25,(No.1), pp. 420–438.
- Rahayu, M. (2017). Keragaman di Indonesia dan Politik Pengakuan (Suatu Tinjauan Kristis). *Jurnal Pemikiran Sosiologi*, Vol.4,(No.2), pp. 1–18.
- Riswanto, A. (2016). Strategi Politik-Hukum Meningkatkan Kualitas Kinerja DPR Ri Dalam Produktivitas Legislasi Nasional. *Jurnal Cita Hukum*, Vol.4,(No.2), pp. 267–286.
- Salam, A. (2015). Pengaruh Politik Dalam Pembentukan Hukum di Indonesia. *Mazhib*, Vol.XIV,(No.2), pp. 120–131.
- Satria, R (2015). Penerapan Metode Regulatory Impact Assessment (RIA) Dalam Penyusunan Regulasi Daerah. *Masalah-Masalah Hukum*, Vol.44,(No.2), pp. 178–188.
- Segun, J. (2014) *The Nigerian House of*

Representatives and Corruption, (1999-2011). *Mediterranean Journal of Social Sciences*, Vol.5,(No.2), pp 561-567

Solihah, Ratnia., & Witianti, Siti. (2016). Pelaksanaan Fungsi Legislasi Dewan Perwakilan Rakyat Pasca Pemilu 2014: Permasalahan Dan Upaya Mengatasinya. *Jurnal Ilmu Pemerintahan; Cosmogov*, Vol.2, (No.2), p. 291.

Sunarto. (2016). Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia. *Masalah-Masalah Hukum*, Vol.45,(No.2), pp. 157-163

Susilowati, E. (2017). Tingkat Keikutsertaan Masyarakat Dalam Proses Pembentukan Undang-Undang. *Morality : Jurnal Ilmu Hukum*, Vol.3,(No.2), pp. 46–58.

BOOKS

DPR. (2019). *Buku Memori Dewan Perwakilan Rakyat Republik Indonesia Periode 2014-2019*. Jakarta:Dewan Perwakilan Rakyat Republik Indonesia.

Lindbeck, A. (2006). *The Welfare State – Background, Achievements, Problems*. Stockholm: Research Institute of Industrial Economics.

Patawari. (2019). *Teknik Pembentukan Peraturan Perundang-Undangan*. Malang: Inteligensia Media.

Omar, N. (2020). *Ilmu dan Teknik Pembentukan Peraturan-Undangungan*. Makasar: Social Politic Genius.

Siahaan, P. (2012). *Politik hukum pembentukan*

undang-undang pasca amandemen UUD 1945. Jakarta: Konperss.

Friedman, L. (1975). *The Legal System. In Legal System, The: A Social Science Perspective*. New York : Russell Sage Foundation.

ONLINE SOURCES

Mustinda, L. (2019). *Seputar Demo Mahasiswa yang Tolak RUU KUHP dan Revisi UU KPK*. Retrieved from <https://news.detik.com/berita/d-4714460/seputar-demo-mahasiswa-yang-tolak-ruu-kuhp-dan-revisi-uu-kpk>

Jordan, R. (2017). *Jokowi: UU Jangan Dijadikan Proyek!*. Retrieved from <https://news.detik.com/berita/d-3696736/jokowi-uu-jangan-dijadikan-proyek>