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Synchronization of Laws and Regulations Promulgated in the Indonesian Law Country according to the Principles of Establishing Legislation

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Abstract: The stages of forming laws and regulations are mentioned in Article 1 paragraph (1) of Law Number 12 of 2011 which starts from planning, preparation, preparation techniques, formulation, discussion, approval, promulgation, and dissemination. Among the series of processes above, there is a process that is not explicitly stated but has a very important role, namely the process of harmonization. The research method used in this study is a normative juridical research method through literature study which examines primary, secondary and tertiary legal materials. The formulation of Article 1 point 1 of Law Number 12 of 2011 needs to be amended and added a new article formulation regarding the harmonization process at the stage of forming statutory regulations promulgated in state news. Second, the formulation of the new article which regulates the mechanism and procedures for the process of harmonization in the formation of statutory regulations promulgated in the state gazette reads as follows "...Harmonization, unification and consolidation of the conception of the Draft Regulation promulgated in the state gazette is carried out starting at the planning stage , preparation, and discussion coordinated by the institution that organizes government affairs in the field of forming statutory regulations."

Keyword: harmonization, formation of laws and regulations.

INTRODUCTION

The formation of good laws and regulations is one of the absolute requirements in order to achieve the goal of developing national law, which can only be realized if it is

supported by processes, methods, and techniques of laws and regulations that are binding on all institutions authorized to make laws and regulations. Various forms of statutory regulations must be arranged in stages (hierarchically) starting from the highest statutory regulation to the lowest form of statutory regulation in order to achieve order in statutory regulations. All forms of laws and regulations are arranged hierarchically based on the same principle of hierarchy as the principle of laws and regulations.

As a consequence of this arrangement, each country has a hierarchy of laws and regulations. Hierarchical organization makes every form of legislation have a definite position in the hierarchy of statutory regulations. Hierarchically, these laws and regulations have a relationship with higher and lower laws and regulations. To the top, a statutory regulation originates from a higher statutory law. Downward, statutory regulations become a source for lower forms of statutory regulations.

Indonesia already has regulations that are used as guidelines in the formation of laws and regulations, namely Law Number 12 of 2011 concerning the Formation of Legislation (hereinafter referred to as Law Number 12 of 2011). In general, Law Number 12 of 2011 contains the main materials, which are systematically arranged as follows: principles for the formation of laws and regulations; types, hierarchies, and contents of laws and regulations; planning of statutory regulations; preparation of statutory regulations; techniques for drafting laws and regulations; discussion and approval of draft laws; discussion and stipulation of draft provincial regulations and draft district and city regional regulations; promulgation of laws and regulations; dissemination; community participation in the formation of laws and regulations; and other provisions containing the formation of presidential decrees and other state and government institutions.

Article 1 Point 1 of Law Number 12 of 2011 states, "The formation of laws and regulations is the making of laws and regulations, which include the stages of planning, preparation, discussion, approval or determination, and promulgation." Among these series of processes, there is one that is not explicitly stated but has a very important role, namely the process of harmonization. Harmonization is an effort to harmonize a law or regulation with other laws or regulations, whether higher, equal, or lower, so that they are arranged systematically and are not conflicting or overlapping.

RESEARCH PROBLEM

Based on the background and problem identification described above, there are two problems that are defined as research problems. The author formulates the two problems as follows: 1. In what stage is the harmonization process carried out when compiling statutory regulations promulgated in state news based on the principles of forming statutory regulations? 2. What is the legal basis for the process of harmonization of laws and regulations promulgated in state news based on the principle of forming laws and regulations within the framework of the Indonesian legal state?

LITERATURE REVIEW

Principles of the Rule of Law

Indonesia is a state based on law according to Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia. This article requires that governance be based on legal principles to limit government power, and this means that state power through its apparatus is limited by law (*rechtsstaat*) and not based on power (*machtsstaat*). A country can be said to be a "rule of law" country if it fulfills the elements of a rule of law state. Friedrich Julius Stahl stated the characteristics of a rule of law state as follows: (a) there is recognition of basic human rights; (b) there is a division of powers; (c) rule-based

government. (d) the existence of a State Administrative Court. In historical records, it is revealed that the concept of the rule of law can be distinguished according to the continental European concept, which is commonly known as *rechtsstaat*, and the Anglo-Saxon concept, known as the rule of law. Thus it can be said that the *rechtsstaat* is reduced to a legal system called civil law, or what we usually call modern Roman law. Historically, this concept of "*Rechtsstaat*" is in sharp opposition to the thinking of Hegelianism, which developed absolutism, so it can be said to be revolutionary. In contrast to the rule of law, which develops by an evolutionary method that is reduced in the common law legal system.

After examining the opinions of state constitutional law experts, Teguh Prasetyo argued that formally the term "rule of law" can be equated with "*rechtsstaat*," or "rule of law," because these three terms have the same direction and goal of avoiding absolute power and prioritizing and declaring recognition and protection of human rights. The differences that can be expressed only lie in the historical aspects of each nation's history and point of view. Just like continental European legal experts such as Immanuel Kant and Friedrich Julius Stahl use the term "*rechtsstaat*," while Anglo-Saxon experts such as Dicey use the term "rule of law," Perhaps this mention is merely technical and juridical in nature to express a study in the field of law that has limitations. However, classical understanding will continue to inspire the understanding of legal experts as well as the concept that the state cannot intervene in the affairs of its citizens except in matters of public interest such as the existence of a disaster or relations between countries. This conception is known as "The State is the Guardian of the Night" (*Nachtwachterstaat)*.

In the concept of a "rule of law" state, it is idealized that what should be commander in chief in the dynamics of state life is law, not politics or economics. Therefore, the jargon that is commonly used to refer to the rule of law is "the rule of law, not a man." Originally, the government regime that was practiced in the history of mankind was the principle of "rule of man", that is, government power was fully in the hands of the strong. This principle then turns into "rule by law," where humans begin to take into account the importance of the role of law as a tool of power. It is only at this last stage of development that, in essence, what is referred to as "government" is law itself as a system. Meanwhile, the individuals who carry out the law only act as "puppets" of the system that regulates it.

In modern history, the notion of a rule of law itself is built by developing legal instruments as a functional and just system, by organizing the supra and infrastructure of political, economic and social institutions in an orderly and orderly manner, as well as building a rational and impersonal legal culture and awareness in life. society, nation, and state For this reason, the legal system needs to be built and enforced properly, starting with the constitution as the highest law.

Indonesia's rule of law is somewhat different from the Dutch *rechtsstaat*, or rule of law. *Rechstaat* put forward *wetmatigeheid*, which later became *rechtsmatigeheid*. The rule of law prioritizes the principle of equality before the law, while Indonesia's legal state requires harmonious relations between the government and the people, which prioritizes the principle of harmony. From this principle, it can also be seen that there are other elements of the Pancasila legal state, namely the establishment of a proportional functional combination between state powers, the settlement of disputes through deliberation, and justice as the last means, while as far as the implementation of human rights is concerned, the emphasis is not only on rights or obligations but also on a balanced relationship between the two.

Legality Principle

The principle of legality is a rule of law principle that is often formulated by *Hetbeginsel van Wetmatigheid van Bestuur*, namely the principle of the legitimacy of

government. HD Stout, citing Verhey's opinion, argued that *Hetbeginselvan wetmatigheid van bestuur* contains three aspects, namely: (1) negative aspects (het negative aspect), (2) formal-positive aspects (het formal-positive aspect), and (3) positive material aspects (het material-positive aspect). First, the negative aspect determines that government actions must not conflict with the law. Government actions are illegal if they conflict with higher laws and regulations. Second, the positive formal aspect determines that the government only has certain powers as long as they are granted or based on the law. Third, the positive material aspect determines that the law contains general rules that bind government actions. This means that the authority must have a statutory basis and that the contents of this authority are also determined by law.

Principles of Formation of Legislation

The principles of legislation, both the principles underlying the formation of laws and regulations as well as the principles underlying the content of laws and regulations, can be found in legal principles (*rechts beginselen*). In addition to the principles previously mentioned, there are several experts who mention at least three functions of legal principles, namely: (1) as a benchmark in the formation and/or testing of legal norms; (2) to facilitate close understanding of the law; and (3) as a mirror of the civilization of a particular society or nation in viewing behavior. To form good laws and regulations, it is necessary to pay attention to various developing legal principles.

Van der Vlies divides the principles in the formation of proper regulations (*beginselen van behoolijke rejel geving*) into formal principles and material principles. The formal principles include: (a) the principle of clear objectives (*beginsel van duidenlijk doelstelling*), which includes three matters, namely regarding the determination of the location of statutory regulations within the general government policy framework, the specific objectives of regulations are formed, and the objectives of the parts that are will be formed; (b) the principle of the right organ/institution (*beginsel van het juiste organ*), this right is to emphasize the clarity of the organ that determines the statutory arrangements; (c) the principle of the need for regulation (*het noodzakelijkeheidsbeginsel*), is a principle that explains various alternatives as well as principles that explain various alternatives as well as the relevance of forming regulations to solve government problems; (d) the principle can be implemented (*het beginsel van uitvoerbaar heids beginsel*), namely the regulations that are made should be affirmed effectively; (d) the principle of consensus (*het beginsel van consensus*), namely the agreement of the people to carry out the obligations arising from a regulation in a consistent manner. While the material principles include: (a) the principle of correct terminology and systematics (*het beginsel van duidelijk terminologie an duiden deiijke sistematiek*), meaning that every regulation should be understood by the people; (b) the principle of equal treatment in law (*het recht gelijkeheids beginsel*), this is to prevent unfair practices in obtaining legal services; (c) the principle of legal certainty (*hetrechtzekerheidsbeginsel*), meaning that the regulations made contain aspects of consistency even though they are implemented in different times and spaces; (d) the principle of law enforcement in accordance with individual circumstances (*het beginsel van de individuale bedeling*), this principle intends to provide a special settlement for certain matters or circumstances which concern individual interests.

The formation of laws and regulations must pay attention to the principles of legality so that laws and regulations achieve their objectives, namely: (a) they may not contain mere ad hoc decisions; (b) regulations that have been made must be announced; (c) there may not be regulations that apply retroactively, because if such regulations are not rejected then the regulations cannot be used as guidelines for behavior; (d) regulations must be formulated in

an understandable formula; (e) a system may not contain regulations that conflict with one another; (f) regulations must not contain demands that exceed what can be done; (g) there must not be a habit of frequently changing the rules so that a person will lose orientation; (h) there must be compatibility between the promulgation and their daily implementation.

RESEARCH METHODS

The research method can be interpreted as a set of principles and procedures for solving problems encountered in conducting research. Types of legal research can be divided into two categories, namely normative legal research or library law research and empirical or sociological legal research. Above is legal research, so the research method used is one that is in accordance with the Science of Law, namely the juridical-normative research method. Normative legal research is legal research that prioritizes the use of secondary data, while empirical legal research is legal research that prioritizes primary data. Primary data is obtained directly from the community, while secondary data is obtained from library materials. This type of research is normative legal research and prioritizes the use of secondary data obtained through library research. Even though the research conducted is normative legal research, field studies are still needed to complement and confirm the research results.

Data analysis is the process of simplifying data into a form that is easier to read and interpret. Data analysis can also be referred to as the activity of providing a review, which can mean opposing, criticizing, supporting, adding, or commenting, and then drawing a conclusion. Data analysis can be carried out in two ways, namely quantitative analysis through statistical tests and qualitative analysis through categorization based on the problems studied and the data collected. The data analysis method used is qualitative analysis because the data used is not in the form of numbers or quantities but rather library data obtained by conducting a study of documents using materials from secondary data.The presentation of the results of data analysis in this study uses a descriptive-qualitative method to provide an overview or explanation of the subjects and objects of research as well as the results of the research conducted. Furthermore, all legal material that has been collected is inventoried, classified, then processed and analyzed in a comprehensive manner, so that from this analysis it can be used as a reference in order to understand and gain in-depth understanding and conclusions can be drawn to answer the problem completely and thoroughly.

RESULTS AND DISCUSSION

The concept of a rule of law in Indonesia was contained in the 1945 Constitution of the Republic of Indonesia before the amendment stated in Article 4 paragraph (1), "The President of the Republic of Indonesia holds government power according to the Constitution." Not only that, the Founding Fathers' desire to create a rule of law state was also reflected in the Preamble to the 1945 Constitution, which stated, "...which was formed in the structure of the Republic of Indonesia, which has the sovereignty of the people.

Sovereignty of the people itself means that full power is in the hands of the people, or it can be said of the people, by the people, and for the people. The people are considered sovereign both in the political field as well as in the economic and social fields. This is in line with the concept of a "rule of law" state in order to create a government that is free from the oppression of the people. Clarity regarding Indonesia as a rule of law occurred after the amendment to the 1945 Constitution of the Republic of Indonesia, in addition to providing implications for the position and position of the MPR, which according to the 1945 Constitution of the Republic of Indonesia was no longer the highest institution, also certainty regarding Indonesia as a state based on law was contained in Article 1 paragraph (3) The

1945 Constitution of the Republic of Indonesia which is the result of the third amendment namely, "Indonesia is a State of Law". This explains that Indonesia is not based on mere power (*machtstaat*). The rule of law in question is a country that upholds the rule of law to uphold truth and justice and there is no power that is not accounted for (accountable). Thus, Indonesia as a rule of law has the following characteristics of "*rechtsstaat*": (a) the existence of a basic law or constitution that contains written provisions regarding the relationship between the ruler and the people; (b) there is a separation of state powers, which includes the power to make laws that are in the parliament and a judicial power that is free and independent, and the government bases its actions on laws (*wetmatig bestuur*); (c) recognition and protection of people's rights, which are often called "*vrijhedsrechten van burger*. The basic values contained in Pancasila are transformed into legal ideals and legal principles, which are then formulated in the concept of Indonesian National Law. Thus, an understanding can be obtained that Indonesian National Law contains a style, does not adhere to legal positivism, rejects legalism and secularism, embodies the value of justice, and protects the entire Indonesian nation and all of Indonesia's bloodshed. When connected with the Indonesian legal state based on Pancasila and the 1945 Constitution, elements of a legal state can be found, namely: (1) a harmonious relationship between the government and the people based on harmony; (2) there is an acknowledgment regarding the existence of a balance towards guaranteeing the rights and obligations of human beings and citizens; (3) there is division of power; (4) in carrying out its duties and obligations, the government must always be based on applicable law, both written and unwritten; (5) the existence of judicial power which in exercising its power is independent, meaning that it is independent from the influence of government power or other powers; (6) settlement of disputes is attempted through deliberations and the court is the last resort if the deliberations fail; (7) ensuring social justice for all people; clothing, food, shelter, sense of security, justice and freedom of religion/belief; (8) concurrent implementation of the principle of people's sovereignty and rule of law.

The principle of legality based on the law makes the government become disturbed in carrying out its duties. As a result, the government is unable to organize a better and more prosperous state life for the people. Weaknesses in the legality principle based on the law mean that this principle must be modified so that it is more flexible and in accordance with developments and the needs of society. In further developments, the principle of legality, which provides more concessions to the government, was born as a synthesis of the principle of legality based on rigid and narrow laws. The principle of legality undergoes a process of development and gives birth to the principle of legality based on law (*rechtmatigheid van bestuur*). The development of the legality principle occurs in the welfare state (*verzorgingsstaat*, or welfare state).

The principle of legality functions as a means of protecting the rights and freedoms of citizens. Government power that is limited by laws or statutory regulations also functions as a means of protecting the rights and freedoms of individual citizens. This protection can simultaneously function to prevent the authorities from acting arbitrarily as a form of abuse of power. The rights and freedoms of citizens regulated in laws and regulations are guarantees and at the same time legal protection for individual citizens. These rights and freedoms must be respected by the government and must not be violated (intervented) by the government. If the government violates these rights and freedoms, the government can be seen as having committed an unlawful act (*onrechtmatigedaad*).The principle of legality has consequences for the duties and authorities as well as the role of the legislature in the practice of administering the state. The legislature has an important role in administering the state because it functions to form statutory regulations that ensure the legality of government

actions. The legislature is an important state organ that determines the function and role of the government in the practice of administering the state. If new developments occur, the legislature must enact laws and regulations to give the government the authority to take action on these new developments.The rigid and narrow principle of legality, which limits and narrows the government's space for movement, is not adhered to in a welfare law state. Now, it is understood that what applies is the principle of legality based on law (*rechtmatigheid van bestuur*). The principle of legality provides a wider space for the government to act in the practice of administering the state. However, the principle of legality in the latter sense is not without consequences and risks. The delegation of legislative authority to the government has further enlarged the government's authority. The government's authority increases opportunities for abuse of power and violations of the rights and freedoms of individual citizens through government legal products because there will be more types of laws and regulations that will be drafted by the government, so special arrangements are needed to regulate the various types of laws and regulations that are issued by the government.In this study, the authors focus on specifically highlighting the Lex Superior derogate legi inforiori principle because this principle is very necessary for the study conducted by the author. The principle of lex superior derogate legi inforiori is seen in Article 5 letter c of Law Number 12 of 2011, which states that one of the principles in the formation of laws and regulations is "conformity between types, hierarchies, and content material." The explanation of Article 5 letter c reads: "What is meant by the principle of conformity between types, hierarchies, and content material" is that in the formation of laws and regulations, one must really pay attention to the appropriate content material in accordance with the type and hierarchy of laws and regulations."If traced to its source, the principle of lex superior derogate legi inforiori is very similar to the stufenbau theory put forward by Hans Kelsen. In his theory, Hans Kelsen said that lower norms are determined by higher norms, and so on, and that this regressus is ended by a higher, basic norm, which is a consideration for the overall truth of the legal system. The stufenbau theory, or legal norm hierarchy theory, from Hans Kelsen was inspired by his student, Adolf Merkl, who argued that a legal norm always has two faces. According to Adolf Merkl, a legal norm, upwards, is sourced and based on the norms above it, but downwards it also becomes the basis and becomes a source for the legal norms below it so that a legal norm has a relative validity period due to the validity period of a legal norm. It depends on the legal norms that are above it, so if the legal norms that are above it are revoked or deleted, then the legal norms that are below it are revoked or erased. Hierarchy theory was developed by Hans Nawiasky, a student of Hans Kelsen, that legal norms in the state are always tiered, namely as follows: (a) state fundamental norms (*staats fundamentalnorm*); (b) basic state regulations / basic state regulations (*staatsgrundgesetz*); (c) laws (*formell gesetz*); and (d) implementing regulations and autonomous regulations (*verordnungautonome-satzung*).

The principles of laws and regulations, both the principles underlying the formation of laws and regulations as well as the principles underlying the material content of laws and regulations, can be found in legal principles (rechts beginselen). Furthermore, I Gde Pantja Astawa and Suprin Na'a mention at least 3 (three) functions of legal principles, namely: (1) as a benchmark in the formation and/or testing of legal norms; (2) to facilitate close understanding of the law; (3) as a mirror of the civilization of a particular society or nation in viewing behavior. To form good laws and regulations, it is necessary to pay attention to various developing legal principles. Various experts have taught us how to form good legislation.There are five (five) key terms whose meaning or understanding needs to be explained, namely: harmonization, unification, consolidation, conception, and draft of laws and regulations promulgated in state news. Law Number 12 of 2011 does not provide an

explanation of what is meant by these terms. The author tries to explain these terms as follows:

a. Harmonization

Harmonization is the activity of harmonizing or aligning. Or in English, harmonize means "bring into harmony," and harmony is defined as a pleasing combination of related things. Kusnu Goesnadhie concludes that the meaning of harmonization is an effort or process to realize harmony, suitability, and balance between various factors in such a way that these factors produce unity or form a whole of the law as part of a system.

b. Rounding off

Rounding implies that something should be shaped to be round or to form cohesiveness or wholeness as a whole. According to the Big Indonesian Dictionary, "rounding" is defined as "a process, deed, or way of rounding." The equivalent of the word "rounding" in English is "integrate," which means to make into a whole by bringing all the parts together, "unity," or "join with something else." The word "integration" itself means "integrating" or "being integrated." Thus, rounding means a process to make all elements (elements) integrated into a unified whole.

c. Stabilization

Stabilization is a process, method, action, or "stabilizing" (upholding, making stable). The word "steady" itself means "firm, strong, fixed." In English, the equivalent word is "consolidation," which means consolidating or being consolidated. The verb is "consolidate," which means to make or become solid or strong. Thus, strengthening etymologically means to make solid, coherent, or compact, stable, strong, or firm.

d. Conception

Conception is defined as an understanding or design (ideas, plans, etc.) that already exists in the mind. In English, "conception" is defined as the conceiving of an idea or plan.draft legislationDraft laws and regulations are written drafts formed by state institutions or authorized officials and are generally binding. Jimly Asshiddiqie stated that "the boundary between a draft law and a law is an act of formal approval in the form of promulgation of the law in the state gazette." Since the law was promulgated, the text of the draft is officially referred to as a law, but until the relevant text is officially ratified and then promulgated properly in the state gazette, the draft text is still referred to as a draft law.

From the description of the meaning of some of the words mentioned above, it can be stated that the harmonization, unification, and consolidation of the conception of draft laws and regulations is an effort or process to realize harmony, suitability, compatibility, and balance between various elements in the preparation of draft laws and regulations as a unified whole, a compact idea, or a solid idea as an integral part of the entire system of laws and regulations arranged hierarchically.The harmonization, unification, and consolidation of the conception of the draft laws and regulations are intended to prevent overlapping and disharmony of potential laws and regulations from the outset. This disharmony occurred due to various factors, as follows: a) its formation was carried out by different institutions and often in different periods of time; b) officials authorized to formulate statutory regulations alternate either because they are limited by term of office, transfer of duties, or replacement; c) the sectoral approach in the formation of laws and regulations is stronger than the systems approach; d) weak coordination in the process of forming laws and regulations involving various agencies and scientific disciplines; e) public access to participate in the process of forming laws and regulations is still limited; and/or f) there is no definite method, standard, or standard that binds all institutions authorized to make statutory regulationsThis article is in line with previous articles, including: 1) Juanda, J., and Ali, H. (2022); 2) Tumanggor, M. S.

(2020); 3) Widijowati, R. D., and Batubara, R. P. (2022); 4) Wijanarko, D. S., and Pribadi, S. (2022); and 5) Sugeng, S., and Adi Nur Rohman, A. R. (2021).

CONCLUSION

Based on the explanation that has been stated in the previous section, the author can draw several conclusions. The conclusion can be described as follows:

1. The process of harmonization is carried out starting at the planning, drafting, and discussion stages of draft laws and regulations promulgated in state news. In accordance with one of the principles of forming statutory regulations, the formation of statutory regulations promulgated in state news must really pay attention to the appropriate content material and according to the type and hierarchy of statutory regulations. The reason is that lower laws and regulations may not conflict with higher laws and regulations.

2. The legal basis for carrying out the harmonization process in the formation of laws and regulations promulgated in the state news has not yet been regulated in Law Number 12 of 2011. Until now, there are no rules governing the harmonization process. This means that there is a legal vacuum governing the processes and stages in the formation of statutory regulations promulgated in state news. Therefore, there must be an article regarding harmonization in the process of forming statutory regulations promulgated in state news.

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