



Legal Politics on Amendment of Law No.12 Year 2011 Concerning the Establishment of Legislation Regulations with Thoughts of Legal Characteristics of Philip Nonet and Philip Selznich

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Abstract

The type of research used in this research is normative legal research. The position of Philippe Nonet and Philip Selznick to understand and analyze characteristics of responsive law as a form of legal harmonization. In terms of the scope of legal harmonization, L.M. Gandhi, who quoted the book *Tussen eenheid en verscheidenheid: Opstellen over harmonization instaaat en bestuurecht* (1988) said that harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, the legal system and legal principles with the aim of increasing legal unity, legal certainty, justice (justice, gerechtigheid) and comparability (equit, billijheid), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if necessary. The function of law and politics in view of Philip Nonet and Philip Shelnick is a very close relationship, the law is a statutory regulation which is actually a crystallization of political wills that interact and influence each other. Legal politics is defined as official line of state policy to make and stipulate laws and regulations in order to achieve ideals and goals of the state as contained in preamble of 1945 Constitution Republic of Indonesia, paragraph IV. The implementation of legal politics is in form of enactment of legislation that is used as a tool to achieve state goals, which is in accordance with the basic framework of national legal politics, which can be seen in PROLEGNAS and PROLEGDA.

Keywords: *Legal Politic; Amendment; Regulation*

Introduction

The concept rule of law, in addition to meaning that it is not a State of Power (*Machtstaat*) also implies recognition of principle rule of law and the constitution, the adoption principle of separation and limitation of power according to constitutional system regulated in constitution, existence of guarantees for human rights in constitution law, the principle of an independent and impartial judiciary that

guarantees equality of every citizen under law, and guarantees justice for everyone, including against abuse of authority by those in power.(Hidayat & Arifin, 2019)

In fact, the concept rule of law itself has long been subject of discussion by experts. Even in days of Ancient Greece, the concept rule of law has begun to be debated and used as a continuous discussion. As one of the foundations human life. Both Plato and Aristotle in their heyday already viewed rule of law as one of most interesting discussions and is predicted to become an interesting discussion in future. It is also proven that at this time, the concept rule of law always gets a very prominent portion of discussion in constitutional system of a country.(Siallagan, 2016)

Law is a political product (formed and ratified) by state to regulate life of society, nation and state in order to lead goal of welfare through legal certainty, justice and benefit. Politics and law have always been intertwined and have become domain the state, both at central level to the smallest regional level throughout the country. The indication of political will is not measured by "how many laws have been made", but whether "access to justice" has been felt by most people in Indonesia, especially from lower layers in rural areas.(F. Putuhena, 2013)

Indonesian state of law can be likened to a house project, where it must be built, then maintained, and then passed on to its successors. It takes self-discovery or identity in its formation. From a historical perspective, Indonesia followed steps of *Rechtsstaat* or *civil law*, because Indonesia was colonized by Dutch for a long time. If concept of *civil law* is applied purely, it will most likely not bring happiness to Indonesian people. Law will move much more slowly than dynamics of Indonesian society. Even worse, the implementation of government will move rigidly and tend to be repressive. Likewise, with pure application *Rule of Law* concept, state control over society will be very weak, because Indonesian society is very plural and dispersed. When compared to the *Rule of Law* that applies in England, British society is 'one descendant' so there are not too visible cultural differences, and there is also a king figure as a unifying symbol of the nation. Even if it is applied as it is by prioritizing liberalism, it will bring division in Indonesia.(Hamzani, 2019)

Discussion on revision of Law Number 12 of 2011 concerning Formation of Legislation (UU PPP) which has been completed by DPR and the government leaves a number of concerns in minds of civil society. The revision PPP Law is seen as only a tool government and DPR to legitimize Law Number 11 of 2020 which was declared conditionally unconstitutional by the Constitutional Court (MK). As is known, Job Creation Law was drafted using omnibus method, a method that has not been regulated by current PPP Law.

According to Philippe Nonet and Philip Selznick, law develops according to development of society as well as an evolution, law develops from the less ideal type (repressive), towards the ideal (autonomous) to the most ideal type (responsive). Philippe Nonet and Philip Selznick, in *law and society in transition to word responsive law*, 1978, introduced three legal characters in society, by linking legal relations with politics, namely: First, repressive law, namely law is a tool of repressive or oppressive power. In repressive type of law, law is seen as a servant of power that is oppressive and coercive and is a sovereign command (holder of political power), who has very free authority without limits, so law and politics and power are inseparable, so that law becomes an instrument and too repressive power.

Second, autonomous law, namely law as an institution capable of taming repression (oppression) and protecting one's own integrity. In the type of autonomous law, the law is seen as an institution or institution capable of controlling repression and protecting its own integrity. The legal system has core "*Rule of law*". Enforcement rule of law as main effort to oversee official and private powers, as well as existence of a court that is free and independent and not manipulated by political and economic powers that have exclusive authority to prosecute violations of law.(Michael, 2022)

Third, responsive law, namely law is a means of responding to needs and aspirations the community. In responsive type of law, law is seen as a facilitator or a means of responding to social needs and aspirations. Thus relationship between law and politics, in repressive type of law, law is subject to politics and power, law is subordinate to power, but in autonomous law, law is separate from politics and power, while in responsive law, law acts as a facilitator or means of responding political needs and aspirations.

According to Mattalatta A, (Andi Mattalatta, n.d.)there are interesting things in this study: *A law state which decided to be a welfare state gives consequences that in adapted the rules would provide guarantee to all nations and individuals against any unfair treatments and arbitrary actions. The law must protect all citizens to their citizen rights and human rights guaranteed. It could only be implemented if the provision of "security" declared in the constitution. In this conception, a political reform of law should be the implementation of national goals and objectives. Hence the law resulting from the legislative mechanism can be nationally applied, not overlapping, hierarchy arrangement, and focused to the constitution. However, if any legislation that deviates, it should be in the framework of implemented national goals. So strongly needed to formulate a grand design to make political law legislation has a clear direction and acceleration for realizing the welfare state. Due the politics of law is really a political policy that determines what legal rules should apply regulates in social and state living.*

By looking at above study, legal issues in this study are (1) position of Philippe Nonet and Philip Selznick in thinking about the legal characteristics of the legal politics of legislation; (2) Legal and political functions of Law no. 12 of 2011 concerning the Establishment of Legislation.

Research Methods

The type of research used in this research is normative legal research.(Michael, 2020) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.

Discussion

The Position of Philippe Nonet and Philip Selznick in Thinking About the Legal Characteristics of the Existence of Legal Politics of Statutory Regulations.

Regarding hierarchy of laws and regulations, there is an expert opinion who says that there is no system in this world that positively regulates order of laws and regulations. Even if there is, the regulation is only limited to principle which states for example: "Regional regulations must not conflict with laws and regulations at a higher level". Or in this case of Constitution there is the phrase "*the supreme law of the land*".(Huda, 2008) From above opinion, it can be seen that the hierarchy of laws and regulations in the form of a hierarchy of types as applicable in Indonesia positively doesn't exist. Even though in general legislation is tiered and tiered.

Public law norms are formed by state institutions,(Ostrikova, 2022) which have a higher position than private law. Public law has a role to regulate society at large, while private law is law that is more in nature interests of community in interacting with other communities. From this explanation, it can be seen that the hierarchy of laws and regulations also applies to the classification of private law and public law. This is done to gain a complete understanding of the system or hierarchy of laws and regulations in Indonesia. By displaying development hierarchy of laws and regulations, a solution will be produced to improve arrangement in order to create an ideal system or hierarchy of laws and regulations.

This law is basically intended to establish a standard provision regarding procedures for formation of laws and regulations both at central and regional levels, and also to become a complete and integrated regulatory tool both from planning stage which is regulated through National Legislation Program and Regional Legislation Program, principles, types and content of each statutory regulation, stages of preparation, discussion, ratification, promulgation and dissemination, as well as community participation. The types of regulations that are accommodated in Law 10/2004 as stipulated in Article 7 paragraph (1), include: (Fathorrahman, 2021) 1. The 1945 Constitution Republic of Indonesia; 2. Laws/Government Regulations in Lieu of Laws; 3. Government Regulations; 4. Presidential Regulation; 5. Regional Regulations; 6. Provincial Regulations; 7. Regency/City Regional Regulations; and 8. Village Regulations

Article 7 paragraph (4) of Law 10/2004 also mentions types of laws and regulations other than those contained in paragraph (1), among others; Regulations issued by People's Consultative Assembly and House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, Bank Indonesia, the Minister, the head of the agency, institution or commission same level established by law or government on orders law of law, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, Village Head or equivalent.

By looking at above, the position of Philippe Nonet and Philip Selznick is to understand and analyze the characteristics of responsive law as a form of legal harmonization. In terms of the scope of legal harmonization, L.M. Gandhi, who quoted book of *Tussen eenheid en verscheidenheid: Opstellen over harmonization instaat en bestuurecht* (1988) said that harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, legal system and legal principles with aim of increasing legal unity, legal certainty, justice (*justice, gerechtigheid*) and comparability (*equit, billigheid*), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if necessary. National Law Development Agency in a book compiled by Moh. Hasan Wargakusumah (Hikmawati, n.d.) and his colleagues stated that legal harmonization is a scientific activity towards a written harmonization process that refers to philosophical, sociological, economic and juridical values. (SUHARTONO, n.d.) In practice, harmonization activities are comprehensive studies of a draft legislation, with finding out whether draft regulation, in various aspects, has reflected harmony or conformity with other national laws and regulations, with unwritten laws that live in society or with international conventions and agreements, both bilateral and multilateral, which have been ratified by Government.

Legal and Political Functions Law No.12 of 2011 Concerning Establishment of Legislations

The formation of law and renewal of legal materials must be aimed at realizing social balance, namely an orderly, just and prosperous life. The style of communication or dialogue and dialectics that takes place in process of forming legislation will affect character of law, more transparent and participatory the law will be more responsive. This research method uses normative juridical. Politics of law and regulation should include three things: (i) guaranteeing justice in society; (ii) creating a peaceful life by maintaining legal certainty; and (iii) realizing usefulness by dealing with real interests in common life in a concrete way.

The application principle of justice is based on "law enforcement" and "equality before law". The principle of legal certainty is pursued through: (i) clear and firm norms regarding imperatives and prohibitions; (ii) legal transparency that avoids public from normative confusion; and (iii) the continuity of the rule of law that provides a reference for future behavior. The principle of expediency is based on ability of law as a social instrument to integrate the aggregation of social interests so that they don't conflict with each other, and on contrary, order occurs.

As a country based on law (*nomocracy*) and democracy, Indonesia also applies role of the state as a welfare state, which is not easy to implement. The law as one of the faces of the law, apparently cannot play a maximum role in social space, even written regulation brings new problems in the current national development arrangement, so that progressive action is needed in current legal politics of legislation.

The function of law and politics in view of Philip Nonet and Philip Selznick is a very close relationship, the law is a statutory regulation which is actually a crystallization of political wills that interact and influence each other. Legal politics is defined as the official line of state policy to make and stipulate laws and regulations in order to achieve ideals and goals of the state as contained in the preamble of the 1945 Constitution Republic of Indonesia, paragraph IV. The implementation legal politics is in form of enactment of legislation that is used as a tool to achieve state goals, which is in accordance with basic framework of national legal politics, which can be seen in PROLEGNAS and PROLEGDA. (Islamiyati & Hendrawati, 2019)

Conclusion

The position of Philippe Nonet and Philip Selznick to understand and analyze characteristics of responsive law as a form of legal harmonization. In terms of the scope of legal harmonization, L.M. Gandhi, who quoted the book *Tussen eenheid en verscheidenheid: Opstellen over harmonization instaat en bestuurecht (1988)* said that harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, the legal system and legal principles with the aim of increasing legal unity, legal certainty, justice (*justice, gerechtigheid*) and comparability (*equit, billijkeid*), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if necessary.

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References

- Andi Mattalatta. (n.d.). *POLITIK HUKUM PERUNDANG-UNDANGAN*. Legislasi Indonesia, 6.4 (2009), 571–84 <<http://E-Jurnal.Peraturan.Go.Id/Index.Php/Jli/Article/Download/334/218>. Retrieved June 11, 2022, from <https://onesearch.id/Record/IOS1674.article-818?widget=1>
- F. Putuhena, M. I. (2013). *POLITIK HUKUM PERUNDANG-UNDANGAN: MEMPERTEGAS REFORMASI LEGISLASI YANG PROGRESIF*. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2(3). <https://doi.org/10.33331/rechtsvinding.v2i3.66>
- Fathorrahman, F. (2021). *Politik Hukum Hierarki Peraturan Perundang-Undangan Indonesia*. *HUKMY: Jurnal Hukum*, 1(1). <https://doi.org/10.35316/hukmy.2021.v1i1.73-90>
- Hamzani, A. I. (2019). *Menggagas Indonesia sebagai Negara Hukum yang Membahagiakan Rakyatnya*. *Yustisia Jurnal Hukum*, 3(3), 137–142. <https://doi.org/10.20961/YUSTISIA.V3I3.29562>

- Hidayat, A., & Arifin, Z. (2019). POLITIK HUKUM LEGISLASI SEBAGAI SOCIO-EQUILIBRIUM DI INDONESIA. *Jurnal Ius Constituendum*. <https://doi.org/10.26623/jic.v4i2.1654>
- Hikmawati, P. (n.d.). *SINKRONISASI DAN HARMONISASI HUKUM PENYELENGGARAAN OTONOMI DAERAH: STUDI DI PROVINSI BALI*.
- Huda, N. (2008). *UUD NRI 1945 Dan Gagasan Amandemen Ulang*. Rajawali Pers.
- Islamiyati, I., & Hendrawati, D. (2019). Analisis Politik Hukum Dan Implementasinya. *Law, Development and Justice Review*, 2(1). <https://doi.org/10.14710/ldjr.v2i1.5139>
- Michael, T. (2020). Requirements for Death in Dismissal of Constitutional Justices. *Research, Society and Development*. <https://doi.org/10.33448/rsd-v9i10.9458>
- Michael, T. (2022). Unraveling the Importance of Democracy in Formation Legislation. *International Journal of Social Science Research and Review*, 5(4), 20–24. <https://doi.org/10.47814/IJSSRR.V5I4.254>
- Ostrikova, T. (2022). Legal Origins and Intersectoral Regulation of AEO Institution. *Lex Portus*, 2022(1). <https://doi.org/10.26886/2524-101X.8.1.2022.3>
- Siallagan, H. (2016). PENERAPAN PRINSIP NEGARA HUKUM DI INDONESIA. *Sosiohumaniora*. <https://doi.org/10.24198/sosiohumaniora.v18i2.9947>
- SUHARTONO. (n.d.). *HARMONISASI PERATURAN PERUNDANG-UNDANGAN DALAM PELAKSANAAN ANGGARAN BELANJA NEGARA (SOLUSI PENYERAPAN ANGGARAN BELANJA NEGARA YANG EFISIEN, EFEKTIF DAN AKUNTABEL)*.

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