

PROBLEMS IN VARIOUS IMPLICATIONS OF LAWS AND REGULATIONS

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Abstract

The state of Indonesia is a country based on law, for that a regulation is needed. The regulation is in the form of laws and regulations, which are formed through various stages in it which eventually produces a regulation that stands firmly. But in its formation, it often experiences several problems, such as problems in the formation stage, interpretation problems, human resource problems to problems in its application, which ultimately makes the laws and regulations imperfect or briefly can be said to be flawed formal and material defects. Imperfect laws and regulations in their application are very difficult and make the regulation much requested to be tested to the Constitutional Court.

Keywords: Rules, Laws and Regulations, Laws.

INTRODUCTION

On all sides of human life both personally, with the people of the nation and state referring to the laws and regulations. Therefore, the behavior of everyone in a country is guided by the role of legislation. Right or wrong a legal action will be given a penalty based on the laws and regulations, which are officially binding and have the power of force in the form of sanctions to individuals or entities / institutions that have committed violations of laws and regulations .

In Indonesia there are many laws and regulations, where the rules are formed for everyone's life. Laws and regulations formed within a certain time need to refer to higher hierarchical rules so that there is no contradiction with each other as a unitary system.

As time passes, the meaning between legislation, laws, and laws is often given the same understanding by ordinary people. In fact, if studied from the context of legal science, the law is half the part of a law. While the law is

something that includes laws and regulations, especially in the written .

Laws are distinguished in the scope of formal and material, which means formal is a written decision which as a form of collaboration of executive and legislative institutions, covered by the enactment of a binding order regarding behavior for the public. While in the material sense is any written provision that the authorized officials publish for it regarding the scope of rules on conduct that are as a whole binding to the public. It is further interpreted as law .

To formulate differences regarding laws in the scope of formal and material is from the forming device and its contents. If it is formed by an authorized official until its contents are applied bindingly to the public, it is thus interpreted in a material sense. If there is a written provision that the authorized officials issue but the content is not binding in general, it cannot be declared as a law in the material sense or legislation against the provision. Meanwhile, if the shaper of the law is an organ of the state that holds legislative power and is

generally applied bindingly, it is referred to as law in the sense of formil for the product of the law .

Inevitably, the formation of laws and regulations that are increasingly dynamic to coincide with the complexity of the problems that today feel undoubtedly regulated and completed through various legal instruments in Indonesia. Not only that, the formation is also inseparable from the influence of the Law which becomes a juridical reference - systematic especially to the formation. Legal clarity on the pattern and degree of laws and regulations in Indonesia is not only based on the formation of laws and regulations but also by methods and ways that remain, standard, and standardization that bind all the authorized institutions that make up the laws and regulations .

The rest that is prominent is that from the beginning of the legal system in Indonesia, the position of the government and parliament is dominant in the formation of laws and regulations, which are rooted in the Continental European legal system that has implications directly with the main criteria for putting forward written law .

The advantages held by the laws and regulations, as a form of the type of written law do not necessarily always include advantages, but also include weaknesses. Reporting from the opinion of Bagir Manan, he wanted to say that actually in the laws and regulations are also covered by various problems, some of which are: inflexibility of laws and regulations, which means that they cannot be adjusted as society develops. Furthermore, the existence of all legal events and lawsuits that are considered unfulfilled by the existence of laws and regulations, so that existing regulations are considered never intact, giving birth to what is commonly called a legal vacuum (regulation) .

While the abundance of good ideas and the higher spirit to realize a state of law that establishes and prioritizes the formation of a regulation - invitation, but regardless of the world of the formation of legislation - until now is still covered by various formation

practices that are dense with problems. Because there are many test applications that are requested to the Constitutional Court. Of the various tests there are more than 100 cases whose testing was granted by the Constitutional Court while others were rejected and sometimes there are also laws and regulations that are annulled by the Constitutional Court because the contents are not appropriate.

RESEARCH METHODS

Stages of work based on the interrelationship of a scientific activity, in order to obtain an understanding that will be applied in the elements of research materials including subjects and objects, by making an effort to achieve an expected answer and can bestow scientific accountability on the answer - the answer including a validity in its scope, is the meaning of the existence of a method.

A process that is systematically carried out in the activity of collecting and analyzing data in the presence of several objectives that are sought to be achieved is the understanding of a study.

In this research applied also descriptive analytical which is a type of analysis. By putting forward a goal to convey a clear picture thoroughly, conduct a review of the positive norms of the law and dig deeper into the facts of the law.

This research is in the form of normative law or known as doctrinal, which applies primary and secondary legal materials. There is also a use that is to obtain information from all aspects of the problem.

The form of information applied in this study is in the form of secondary data and primary data where the basic norms of Pancasila, legal papers and laws and regulations are the benchmark of this type of data. Then also applied qualitative techniques as a form of analytical techniques in this research that utilize theory and legal materials studied from various roots such as articles, books, journals, and also laws and regulations.

RESULTS AND DISCUSSIONS

Problems of The Formation of Laws and Regulations - Invitations

Considering that an arrangement is the foundation for the establishment of legislation in regulating relations between States and citizens is considered too important. It is understandable that laws and regulations as part of the scope of social contracts or social contracts in which the rules of the game contain in a nation and state. And it is also a rule that is simply a puppet created to provide certain limits to the course of a government .

Legislation is the result of the hard work of state institutions or authorized officials produced in the form of a written order that is binding in general. Contained in it rules and mechanisms among the relations of fellow citizens, to citizens with the government, the government in this case includes the central government and local governments, next also between state institutions. Then the implementation in the scope of the state as real evidence in Indonesia, is a national law . So it can be understood that the regulation is enforced without exception for all Indonesian citizens .

The formation of laws and regulations is basically not enough through a stage or method that has been regulated solely in a text - the text of the Law . The rest of the art in punishing using written law has implications in the formation of laws and regulations. Written law by itself has an innate problem, which is where the number and types are very large to various forms .

However, in accordance with the reality, the actuality of various types and forms of laws is really a natural state derived from a written law, or even in a written manuscript, because it is intended in response to the development of the needs of state and society laws that are increasingly rapid. As it is known that legal vacancies are not allowed in the study of legal science. This can be interpreted that instead of experiencing a legal vacuum it is better with bad laws, both from systematics and material though. The existence of a legal vacuum finally

triggered its own impact, namely the existing legal vacuum finally tried to be filled with the formation of regulations .

In order for a good law to be formed, therefore the principles of law need to be considered in its formation as an ideal value for the formation of a law . The foundations that must be realized include the principle of formil and the material principle .

Sometimes the formation of laws and regulations experiences various problems. The problems that arise are not only from one side but from various sides, both in terms of formil and material aspects which ultimately often make the rulemaking even imperfect and hampered. The formation of laws and regulations is often assessed as a formil defect and material defect, where formil defects can occur if in the preparation there are procedural errors, while being judged to be material defects if the regulation is substantially considered incorrect.

The problem that arises first is to include procedures in the formation of laws and regulations, as included in the formil problem. Where in the problem of formil this is related to the existence of formal procedures that should be orderly and absolutely must be obeyed but instead there is a deviation to it. As previously explained, in forming a law - the invitation consists of several stages, namely the planning stage, to dissemination .

The problem in question arises in the process of forming laws and regulations - invitations are deviations to the stages of formation. Problems that may arise at the planning stage are there are disobediences carried out by non-regional government ministries / agencies .

The most common problem encountered with the planning procedures for the preparation of government regulations and presidential regulations is the behavior in the form of disobedience from the shapers to carry out the period in the formation of government regulations and presidential regulations consistently lead to the tempo set by the parent regulation .

The problems that include the law making process are not only about the scope of the formation stage, but also include the implementation of principles in the formation stage. Part of the whole principle that in its application often occurs problems, namely the principle of conformity between types, hierarchies, and content materials and the principle of openness .

Apart from these principles that are the problem, it turns out that in its formation there are often also problems on the principle of openness. While Article 96 of Law No. 12 of 2011 is regulated regarding community contributions. In this case, the participation of the community has a very important value. This is because the community is targeted in the application of the law, when the draft is passed or set to become a law - invitation, so it has become a necessity if in every stage of formation there is community involvement in it, except the determination or endorsement and withdrawal .

After the problem of law making process problems, interpretation or also known as interpretation problems are also often questioned. Basically in the practice level, there are differences in interpretation at the two formal congresses, where the congress consists of academic forums and court forums. Various differences in interpretation existing of a legal text or legislation in a formal forum that in an academic point of view can be found and seen, which is the power in finding a scientific truth. This of course clashes with the interpretation of the court forum which in the case of normative juridical truths is sought .

To be able to find the many problems with the legal text regarding interpretation, one of the indicated ways can be found by looking at the high percentage or not the total testing of laws and regulations.

The problem of legislation does not only stop at the problem of interpretation, but also includes problems in its application. The effectiveness of a regulation is strongly influenced by problems in its application. Generally a law -

an invitation is declared official if it has been enacted.

Laws and regulations in their application have problems that lie in the sociological and philosophical spheres. If the application is juridical then the enactment of the laws and regulations from the date of enactment, with rather harsh language and terms can be said that the community must forcibly obey the laws and regulations. After that the following problems that are common are problems regarding human resource capacity or capacity problems.

In this case, human resources include human resources in the design, formation, implementation, and human resources in terms of enforcing laws and regulations .

The designer of laws and regulations has a very important role. The designers have a central role that designs a law - invitation in order to build firmly. The designers are not only required to be able to string together words to be used as legal norms which are then delegated in articles and paragraphs, not only that, but also a sharp analysis of the quality of the articles and paragraphs of the laws and regulations. While the weight of a regulation is also influenced by its forming capacity, in this case there is a capacity to form ministerial regulations that affect the emergence of various problems, where rules made vertically are considered to clash with various laws and regulations, as well as legal certainty and certainty of trying cannot be given, as well as the existence of a legal norm created outside his authority.

Apart from the capacity of forming laws and regulations, other problems also come from the capacity of implementing laws and regulations which of course are prone to occur as a result of implementers who do not understand all the provisions expressed in the laws and regulations - invitations which have become the main obligations and functions in organizing certain government activities. The main problem that comes from law enforcement for violations that occur in laws and regulations is the problem of deviations in power and lack of

understanding of laws and regulations. Problems that occur can also include the corrupt behavior of law enforcement officials, in addition to corruption there is also material content of laws and regulations that become a matter of substance insight by law enforcement officials. Various problems that occur are problems that are very prone to occur in every procedure for the formation of laws and regulations, from the beginning of formation to its enforcement .

Substance of Laws and Regulations - Invitations and Their Testing in Indonesia

Written regulations are created by a state institution / authorized officials, which then apply bindingly to the public is the laws and regulations. Reporting from indonesia's positive legal system can be found in various forms and types, starting from the highest degree, namely the basic law of the country, to the lowest degree according to systematic procedures and hierarchies of laws and regulations in Indonesia.

The formation of laws and regulations is studied from a positive legal system, covering various types formed based on the authority delegated by the laws, so that the recognition is not only hierarchical, but also juridical recognition as well as laws and regulations created by state institutions and also the government .

A law - the invitation is often held testing against it, testing the laws and regulations - invitations are carried out for various reasons. Testing laws are intended to be able to maintain the balance of mechanisms in a law and regulation, besides that this testing is needed also because there are often laws that substantially clash with the 1945 Constitution.

udicial review is a well-known thing. Especially since the Constitutional Court was established, which is around 2003. Since the 1970s, there has been a testing of laws and regulations through Law No. 14 of 1970 concerning provisions of the Basic Provisions of Judicial Power where the power is placed on the Supreme Court (MA) through limited authority and power .

In order for the guidelines expressed in the Basic Law or other laws and regulations to be maintained, a body and procedures are needed to monitor it. One of the things that can be realized as a form of observation is realized through testing laws and regulations. Various terms pinned to the testing power of laws and regulations are known as toetsingsrecht, which is explained in this term that there are various types of toetsingsrecht, namely: (a) toetsingsrecht judicial review; (b) toetsingsrecht legislative review; and (c) toetsingsrecht executive review .

The authority of testing in Indonesia, decomposed in the two organizers of judicial power that has been determined by the 1945 NRI Constitution, which consists of the Supreme Court and the Constitutional Court. Formil and materiil testing is the authority of testing laws that are realized in two forms. Formil testing coincides with formation procedures as well as other matters that are not covered by material testing. Meanwhile, the scope of formil testing is not quite limited to the procedure for the formation of laws, but aspects of the form and enactment of laws are also covered in it.

Material testing is a test that coincides with the content material in a paragraph, article, or eleman of the Law that allegedly clashes with the 1945 NRI Constitution. If a Law will be tested against the 1945 NRI Constitution, it is not enough to only be implemented in certain articles that are considered problematic, but the opening and torso of the Constitution also needs to be considered as a whole unit.

The idea of a mechanism in testing a law in the Indonesian context has actually existed since the debate period in the BPUPKI session, especially during the drafting of the Indonesian constitution, namely the 1945 NRI Constitution. Soepomo denies this. The denials expressed by Soepomo are getting stronger because of the support of the political and legal situation in Indonesia that has not been sufficient in the run-up to independence. After that on October 1-3, an MPR session was held that discussed changes to the 1945 NRI Constitution regarding Chapter IV on the

Supreme Court which in which gave rise to the inspiration for the Supreme Court to have the power to test laws and regulations under the law .

In a constitutional court ruling there are several restrictions, namely:

1. The content contained in the Constitutional Court Decision that is regulating is prohibited.

It is said by the constitutional court ruling that the law as well as part of its entire contents that clash with the specific elements of the Constitution.

2. The Law and part of its entire contents cannot be overturned by the decision of the Constitutional Court, in which case its authority is attributed by the Constitution to the laws.

3. The decision of the Constitutional Court is not allowed to go beyond the things requested by the petitioners. Although the Constitutional Court considers that there are important things from the requested that are not asked to be decided, so the Constitutional Court is not allowed to decide based on the assumptions of the Constitutional Court.

4. Decisions issued by the Constitutional Court shall not be concerned with or touch on elements relating to the Constitutional Court or the judiciary .

CONCLUSION

A country in it is covered by many elements, especially society. People in their lives need a regulation to safeguard and protect their rights. A country, especially Indonesia, has laws and regulations, which are systematically arranged to regulate human relations in community life.

In the formation of laws and regulations - invitations pass through several stages, namely the stages of forming planning laws and regulations, to withdrawal. In order to produce quality laws and regulations, the existing stages must be considered correctly. But in practice there are many rewards in the stages of law formation, where existing problems include law

making process, interpretation problem, implementation problem, and capacity problem.

The existing problems make a law - the invitation is sometimes not perfect. In fact, sometimes often experiencing formil and material defects that make him requested a lot of testing in the Constitutional Court.

Formil defects in a law and regulation because in the procedure of its formation there is a problem of formil, which in the problem of formil is related to the existence of formal procedures that should be adhered to but instead there is a deviation to it. While assessed materially defective if the regulation is substantially judged incorrect.

SUGGESTION

In the formation of laws and regulations should observe the procedures carefully and correctly, so that the laws and regulations are realized perfectly. For this reason, the existing principles also need to be considered. After that the application of laws and regulations must also be observed, because sometimes in its application often has problems that lie on the philosophical and sociological level.

Not only that, human resources that play a role in the design of a law - invitations also need to be considered, which they have a very important position. Regardless of the existing problems, the implementation of laws and regulations is also no less important, which in this case many implementers do not understand or sometimes even many abuses of power in it. Therefore, all aspects and stages in the formation of laws and regulations must be considered and organized properly in order to stand firmly.

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