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Problems of the Legalization and Dissemination Process

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Abstract

Law number 11 of 2012 concerning the establishment of laws and regulations (Law P3). On the other hand, Law P3 requires all these laws and regulations to be promulgated and placed in the official gazette of the state that has been determined so that they can be considered to come into force. In its application, this problem also spreads to the promulgation process and its enforcement mechanism where there are still many laws and regulations (according to Law P3) that apply without going through the promulgation process. This research aims to 1). How is the process of promulgation in the formation of laws and regulations in Indonesia; 2) How is the dissemination of laws in Indonesia seen from the perspective of the mechanism of its enforcement. This type of research is normative and descriptive, using 4 approaches, namely legislative, historical, comparative and conceptual approaches. The data sources used are primary data and secondary data. Techniques for collecting legal materials through literature studies or document studies. Based on the results of the research, it is concluded that (1) To find out the process of promulgation in the formation of laws and regulations in Indonesia; (2) To find out how the dissemination of laws in Indonesia is seen from the perspective of the mechanism of its enforcement.

I. INTRODUCTION

For a country that adheres to the concept of law and democracy. Indonesia is a country of law as well as a democracy, this is expressly stated in the 1945 Constitution of the Republic of Indonesia. As a state of law, of course, all actions in the life of the nation and state must be regulated by law (rules). Law as a social institution has an important role in society to create peace, justice and security as well as regulate all human actions that are prohibited and ordered (Huroiroh & Sushanty, 2022).

Each community has different interests, with many different interests in society, so regulations are needed to regulate these differences in interests. The regulations contain what must be done and what not to be done which are coercive, binding and contain strict sanctions. One of the laws that applies in Indonesia is criminal law (Kotalewala et al., 2020). Criminal law is part of the totality of laws that apply in a country (Ruba'i, 2021). So that with this criminal law, everyone who violates the norm will be subject to sanctions, both in the form of criminal and administrative sanctions that will be processed through the judicial institution.

Laws and regulations sometimes cause problems caused by weaknesses as stated by Bagir Manan which include: (1) congenital defects because they are easy to wear out (*out of date*) compared to changes in society; and (2) artificial defects due to the entry or inclusion of various policies or actions that interfere with laws and regulations as a system (Sanjaya & Erny, 2024). These weaknesses cannot be separated from human error factors to the politics of state law, such as overlapping content and authority, laws and regulations that do not reflect the aspirations of the community and development needs, the formulation of biased, multi-interpretation, and inconsistent norms.

One of the problems related to this process is that there is no institution that ensures management, coordination, and decision-making in the formation of laws and regulations that are comprehensive. The spread of stages to various institutions has caused difficulties and lengthy processes in the formation of laws and regulations (Sanjaya & Erny, 2024). One of the forms is related to the process of promulgating laws and regulations (Promulgation). Since the enactment of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations (Law

10/2004) and Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Law 12/2011), the authority to promulgate is carried out by the Ministry of Law and Human Rights (Kemenkumham) in accordance with the function of formulating, determining, and implementing policies in the field of laws and regulations. Meanwhile, the Director General of Laws and Regulations has one of the functions of conducting technical guidance and supervision, harmonizing, and promulgating laws and regulations (Pratama et al., 2022).

This authority was changed through Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Law 15/2019) which mandates the existence of ministries or institutions that carry out government affairs in the field of the formation of laws and regulations as the center of national legislation so that there is no overlap (including to make invitations). In the transition process, the authority to promulgate is still exercised by the Minister of Law and Human Rights. In its development, there was another change after the enactment of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Law 13/2022), which divided authority between the Ministry of Foreign Affairs and the Ministry of Law and Human Rights in the promulgation process, The change did not cause no consequences, considering the addition of institutions and coordination mechanisms in the promulgation stage (Pratama et al., 2022).

Just as the process of forming laws and regulations requires an academic study, which contains philosophical, juridical, and sociological foundations as a comprehensive framework of thinking on the Indonesian legal system, the amendment of Law 12/2011 through Law 13/2022 which significantly changes the promulgation process should also contain the basis for a comprehensive change in the authority of the legislature. Maria Farida emphasized that the promulgation is not just an administrative matter, but a formal notification so that the laws and regulations have binding legal force. The importance of the promulgation procedure is a factor that affects the functioning of the legal system as stated by Lon F. Fuller that the regulations that become guidelines for the authority must be promulgated (Sanjaya & Erny, 2024).

Some of the research related to this research includes Yuliani's (2017) research explaining that the promulgation gives birth to binding power and a form of recognition of the sovereignty of the people so that the people must know all legal products formed by the state. The research is focused on examining the impact of legislation on the enforceability of legal products and the problems of legislation on various forms of legislation. This study recommends that the promulgation system be updated with centralization to simplify the system and maintain the quality of laws and regulations. Further research by Sopiani (2020) examines the legal politics of the formation of laws and regulations. This study explains the urgency of the guidelines for the formation and special institutions that carry out the function of forming laws and regulations.

Previous studies have not shown that there is a specific study on Invitation Problems. This research has different objects and perspectives, in this case the focus of the research is on the Problem of Promulgation and Dissemination of the Law, The purpose of this research is to find out and explain the development of the promulgation and dissemination of the Law.

II. RESEARCH METHODS

This research is a normative (doctrinal) legal research that examines the regulation of promulgation authority, which is carried out by examining the history of promulgation law (Muhaimin, 2020). The source of research data was obtained through literature studies (*Library Research*) in the form of secondary data, which includes: (1) authoritative legal sources; and (2) legal and non-legal information in the form of scientific publications, reports, research results, government archives, published data, and other relevant forms of information. The data is analyzed qualitatively by defining, examining, and analyzing the development of the regulation of the legislative authority and its influence on the coordination mechanism linked to relevant legal concepts and theories

III. RESULTS AND DISCUSSION

A. The Invitation Process in the Formation of Laws and Regulations in Indonesia

After going through a long and tiring process, finally Law No. 16 of 2011 concerning Legal Aid for the Poor was also passed, but many people did not know about the law and it was due to the weak

process of the Government's socialization process to the public about the new laws and regulations (Pratama et al., 2022).

In some cases, both criminal and civil, many residents, especially those who are classified as poor, often feel confused when they are going to file a complaint with the authorities. While he was a victim of a case that occurred. The confusion is not only a matter of how the complaint mechanism is, but also how he gets assistance for protection for himself and his family. Because when a case occurs, a person's psyche is in a different state of anxiety when the person lives his life normally (Boris Tampubolon, 2021).

Confusion about the law is certainly a problem for poor people who lack knowledge related to the law and the complaint mechanism process. This is certainly a homework for the government to continue to socialize all policies that apply in this country for the poor. In fact, the Government has indeed made many policies in the form of laws that regulate the problems of people's lives.

If the government is asked why Law 5 was made, of course there will be an answer that the law was made to regulate people's lives better. For example, now the government has made Law No. 16 of 2011 concerning Legal Aid for the Poor. As referred to in article 5, the legal aid provided includes any person or group of poor people who are unable to meet the basis properly and independently. The Legal Aid can be for assistance in the realm of Law (justice) or outside the Law(Pratama et al., 2022) .

For example, for psychological recovery or others, even though the law is intended to be good, unfortunately socialization for the law itself is rarely carried out by the government. It is not surprising that many residents do not know because they do not know, people are often victims of injustice committed by government officials.

B. The dissemination of laws in Indonesia is seen from the perspective of its enforcement mechanism

The success of the implementation of the dissemination of laws and regulations is one of them is very determined by socialization, and if there are some people who do not know about the regulation, then this is an indication of the lack of effectiveness of socialization carried out by the authorities (Adrian Sutedi, 2024).

In principle, in law, it is not justified for someone to "not know" if a legal provision is applied. With the enactment of the provisions of a law and regulation, every 4 Law No. 16 of 2011 concerning Legal Aid, Articles 5-6 citizens must be "considered to know" so that they cannot avoid the application of a law on the grounds of "not knowing". This principle came to be known as the Principle *Fiction* Law Means The principle of the enactment of a law that assumes that everyone knows the existence of a law So that there is no reason for someone to free themselves from the law by stating that they do not know the existence of the law (Nurhayati, 2020).

The Indonesian legal system as a system of rules that applies in the State of Indonesia is such a complex and extensive system of rules, consisting of legal elements, where the elements of law are interconnected, influencing and complementing each other (Gunawan, 2023). Therefore, talking about a field or element or sub-system of law that applies in Indonesia cannot be separated from others. Therefore, socialization and dissemination are absolutely necessary because the law is only formulated by a number of figures representing 270 million Indonesian people.

However active the mass media is involved in helping to socialize the process of discussing the draft constitution, the understanding and appreciation of the values contained in the formulation of the constitution is very minimal among the organizers themselves, and especially among the wider community. The Constitution as the supreme law in the administration of state power is not enough to be written as a text of the Constitution, but also needs to be understood and understood with the same perception as the supreme law (*cognitively comprehended*) and must even be reflected in the political behavior that lives in the daily activities of the state (Santika, 2021).

Therefore, continuous education and socialization efforts are very important to be carried out, not only through formal and structured education and socialization but also through various cases and events as well as practical experiences that make people aware of the meaning and significance and content of values contained in the Legislation of the Republic of Indonesia. In the world of law, information and knowledge about legal products are the main things both in the usefulness of academic studies and in the usefulness of practice. As a state of law, law becomes the starting point for all state and community activities or a reference for those who

rule and those who are ruled (Ridwan & Sudrajat, 2020).

Therefore, everyone must know the law (law), even in every time a law is issued it is stated that everyone is considered to know it. So when a person violates the law, then he cannot postulate that he does not know that there are laws and regulations that regulate an act that he is held legally accountable. For everyone to know about every law and regulation is not an easy matter, especially in a country with a population of 8 people, a large area, a diverse level of public education, and a culture and legal awareness that has not grown properly, then it is possible that many people do not know the law or do not know about a legal provision (legislation) which is inevitable. However, as already stated, ignorance of the law is not a reason that can exempt a person from legal responsibility for an act (deed) that he commits. The question of how to make everyone in a country aware of the laws and regulations that apply in their country may be a problem faced by many countries, especially in developing and underdeveloped countries. Even for countries that have not made the law the commander in chief in their country, where the law is still number two, it is likely that the people are not aware of the law will be larger.

But the problem then is how to make everyone in a country aware of the laws that apply in their country is an important problem that is often neglected, has not been managed optimally, so that it can be one of the causes of the high number of unlawful acts and actions of citizens. The situation will get worse, when the country in question has a lot of laws and regulations and many types and levels. Not to mention, if there is a very high intensity of laws and regulations, both in the sense of changes, replacements, revocations or the making of new laws.

This clearly requires more attention to the need for socialization to the public (the public) related to the relevant legal products. Based on article 29 of Presidential Regulation No. 01 of 2007 concerning the Ratification of the Promulgation and Dissemination of Laws and Regulations, the Government is obliged to disseminate laws and regulations that have been promulgated in the State Gazette of the Republic of Indonesia and the State Gazette of the Republic of Indonesia (Tambunan, 2024).

In the perspective of forming public legal awareness, of course a balance of activities is needed. Usually, the issue of legal products is a public discussion or receives a response in the design and discussion process between the executive and the legislature (Ariyanto, 2023). However, when the legal product has been promulgated, the public may not know exactly what is regulated in a legal product that is published, the situation will be far from being found out about the law, if it concerns a more technical legal product or the implementing regulation of a higher law and regulation. From a glance the problem that says that everyone is considered to know the law and the matter of socializing the products of laws and regulations, it should be a special concern for a country that declares itself a state of law. In this context, law is not solely the domain of the ruler, but also an important part of the needs of society.

This means that in an effort to build a state of law that 8 Presidential Regulation No. 10 of 2007 concerning the Ratification of the Promulgation and Dissemination of Laws and Regulations, Article 29 10 is good on the one hand, and builds public legal awareness on the other, the use of the formula "with the promulgation of a legal product, everyone is considered to know it", should be accompanied by various other efforts supported by facilities and infrastructure, and even by taking advantage of technological advancements, making it easier for the public to know information from the latest legal products (Munawar et al., 2021). In this context, legal socialization and the dissemination of information on new legal products must certainly develop in a broader and more effective form. In Indonesia itself, the issue of socialization and publication of the products of laws and regulations has been regulated in such a way in Presidential Regulation No. 01 of 2007, the problem now remains to the extent to which the government builds efforts and activities of socialization and publication of the legal products that it promulgates, so that the formulation of "everyone is considered to know" after a legal product is promulgated, there will be a high and strong legal awareness of the public and At the same time, it strengthens the existence of the state as a state of law. In the mass media, there are a lot of news that contains about daily events or events (Ramadhan et al., 2023).

But what happens is that they are less able to catch the news in the mass media, this is common in political, economic, legal, social news and it happens because of their low education. Socialization is a process, the success of

socialization cannot be measured in a short time. For example, a year of socialization has been declared successful. Socialization is a continuous process (Silvia et al., 2021).

Regarding the Laws. Does everyone understand what the Laws and Regulations are? There are still many Indonesians who do not know what Laws and Regulations are and Indonesia has a large area. The socialization should not only be carried out through electronic media but also through print media, leaflets, pamphlets and even representatives from the government must go directly to the villages to disseminate and socialize the newly enacted legislation as stated in Presidential Regulation No. 01 of 2007 Article 29 paragraph 6: Dissemination of laws and regulations as referred to in paragraphs 1 and 3 through: 1. Print media 2. Electronic Media 3. And other ways. Dissemination as referred to in other ways is socialization in the form of face-to-face or direct dialogue, in the form of lectures, workshops/seminars, scientific meetings, press conferences, and others.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on research on the problems of the process of promulgation and dissemination of laws, it can be concluded that the process of promulgation and the mechanism of enforcing laws in Indonesia still face various challenges. Although Law Number 11 of 2012 concerning the Establishment of Laws and Regulations (Law P3) has stipulated that every legislation must be promulgated and placed on the official gazette of the state in order to be considered valid and valid, in practice there are many regulations that are enforced without going through the appropriate promulgation process.

This study found that the shortcomings in the implementation of this enforcement mechanism were due to the lack of transparency and consistency in the promulgation procedure. In addition, the dissemination of laws is also not always carried out effectively, so the public often lacks knowledge of the applicable laws. By using a normative approach that includes legislative, historical, comparative, and conceptual approaches, this study shows the importance of improving the governance of the process of promulgating and disseminating laws and regulations so that the implementation of the law in Indonesia can run better and in accordance with the principles of the rule of law.

B. Suggestions

1) Increasing Transparency and Compliance Procedures, the government needs to strengthen the supervision and transparency mechanism in the promulgation process so that every legislation can go through the procedures that have been stipulated in the P3 Law. This step is important to ensure that all regulations are promulgated correctly and legally.
2) Optimizing the Dissemination of Regulations, it is necessary to improve the method of disseminating the law to the public. The government can utilize digital technology and social media to disseminate legal information more effectively and evenly, so that every citizen has easy access to the latest and relevant legal information.
3) Improving Legal Education The community, the government and related institutions must strengthen legal education efforts for the public to increase understanding of the importance of the process of promulgating and enforcing regulations. With a better understanding, people will be more aware of their legal rights and obligations as well as the mechanisms that apply in the national legal system.

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