

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law



Andrian Erickatama<sup>1</sup>, Wicipto Setiadi<sup>2</sup>, Irwan Triadi<sup>3</sup>

<sup>1,2,3</sup>Master of Law, Universitas Pembangunan Nasional Veteran Jakarta

**ABSTRACT:** Delegation of statutory regulations is often interpreted as an order to make equivalent rules or inferior rules in the form of implementing regulations. This delegation is stated in the article of the Law. It becomes a dilemma if there is an article that is delegated to form an implementing regulation, but the regulation has been regulated by regulations that are still in force and are still relevant to higher regulatory regulations so that the formation of new implementing regulations is not yet necessary, while the regulation that mandates it provides a time limit. Establishment of implementing regulations. This research aims to find out, explain and analyze problems related to the implementation mechanism for the formation of implementing regulations from a statutory regulation. Apart from that, to find out and analyze the impact if the government as a regulator does not carry out delegation of a statutory regulation. This research is normative juridical research (doctrinal legal research). Provisions regarding the time limit for enacting Government Regulations and other regulations as implementation of the Law are orders from Article 74 paragraph (1) of Law No. 12 of 2011. Determining the time limit for the formation of implementing regulations for the formation of statutory regulations contained in the Law is an important thing as a limit for the government to immediately ensure that there are implementing regulations for a Law, thereby ensuring effective implementation of the Law. If the President does not formulate implementing regulations by the deadline for forming implementing regulations, this does not eliminate the president's authority to establish implementing regulations at a later date.

**KEYWORDS:** delegation, establishment, statutory regulations

### INTRODUCTION

As a country based on law, then in all views of life in society, state, or nation, in terms of government, the Indonesian state must have a legal basis. Based on the 1945 Constitution of the Republic of Indonesia (Constitution of the Republic of Indonesia Year 1945). The state has the obligation to organize the implementation and application of domestic development regarding law that has a design that has integration and continues in a domestic legal system that guarantees the protection of the obligations and rights of all Indonesian citizens. This definition of the rule of law refers to a state where the actions of the government and its people are based on the law to prevent arbitrary actions on the part of the government and the actions of the people carried out according to their own will.<sup>1</sup>

An orderly design related to the preparation of Rules and Regulations is needed in terms of meeting the needs of the implementation of government and society. Rules and regulations are basically formed because there is a need and have benefits<sup>2</sup>

<sup>1</sup> Ahsin Tohari, Hak Konstitusional dalam Hukum Tata Negara Indonesia, Erlangga, Jakarta. 2016.

<sup>2</sup> Frasa 'dibutuhkan' dan 'bermanfaat' dalam konteks ini merupakan suatu penjelasan dari asas 'kedayagunaan' dan 'kehasilgunaan', yang merupakan asas pembentukan peraturan perundangundangan yang baik sebagaimana tersebut dalam Pasal 5 Undang-Undang No. 12 Tahun 2011 beserta penjelasannya. Senada dengan pengertian frasa 'daya guna' menurut Maria Farida Indrati S. Menurut beliau 'daya guna' (*efficacy*) dari norma dapat dilihat apakah norma itu berdaya guna secara efektif atau tidak atau apakah norma itu ditaati atau tidak. Lebih lanjut lihat: Maria Farida Indrati S, Ilmu Perundang-undangan: Jenis, Fungsi dan Materi Muatan (Yogyakarta: Kanisius, 2007), hlm. 39. Kemudian menurut Bentham, prinsip manfaat dalam bentuk 'kebaikan publik' hendaknya menjadi tujuan legislator untuk merealisasikan melalui legislasi. Lebih lanjut lihat: Jeremy Bentham, Teori Perundang-undangan: Prinsip-Prinsip, Hukum Perdata dan Hukum Pidana (*The Theory of Legislation*), diterjemahkan oleh Nurhadi (Bandung: Nuansa & Nusamedia, 2010), hlm. 25. sebagaimana dikutip dalam Ade Irawan Taufik dalam tesis Membangun

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

to provide regulations in the order of life in society, nation and state. All laws and regulations must be able to solve problems, not become more problems, insecurity, and unfair things.

The formation of laws and regulations is organized in Act No. 12/2011 on the Formation of Laws and Regulations (Act 12/2011). The Act is a substitute for Act No. 10 of 2004 on the subject of the Formation of Laws and Regulations, the way it is clear and standardized and includes agencies authorized to issue laws and regulations that expand the scope of the substance of the content to include the provisions of other laws and regulations and regulate the enactment of the Act related to the basis of Article 22A Constitution of the Republic of Indonesia Year 1945.

A constitution can be defined as a written document that outlines the legislative, executive and judicial powers and other important state institutions.<sup>3</sup> In the context of delegated authority, it comes from the Constitution and regulates the delegation of regulations to lower regulations, namely laws. Such legislation must be discussed and passed by the House of Representatives (legislative) with approval by the President (executive). The legislature then delegates to the executive the power to make further regulations under the Act. The executive body that implements on the basis of the Act can submit sub-delegation to the next derivative regulation. Related to the regulatory power, so that the government by itself is interpreted as having freedom in organizing the administration of government for the benefit of society as a whole. Related to this, the government is considered to have the authority to issue regulations under the Act in the absence of delegation, even though the law does not order it. Therefore, in simple terms, there are three levels in the regulatory hierarchy: Act (legislation), implementing Act (second legislation), and implementing regulation (tertiary regulation).

Not all laws and regulations can be considered as the basis for the juridical basis for making laws and regulations, but only laws and regulations that are equal or superior can provide delegation for laws and regulations that are equal or inferior. For this reason, inferior laws cannot be made as the basis for the formation of superior laws and regulations.

Regarding the use of laws and regulations, HAS Natabaya explained the use of laws and regulations as “a policy instrument (beleid instrument) of the government (state) to make rules on a matter to resolve a problem found in society in providing services to the community.”<sup>4</sup> While Bagir Manan's view is that the existence of laws and regulations has an important and strategic role in terms of ensuring more real legal certainty, this is because the direction of the rules can be identified and found again.<sup>5</sup> Three functions of Legislation in general, namely:<sup>6</sup> 1) the function of means of order or behavioral guidelines; 2) the function of development instruments; and 3) the function of integration factors.

Over-regulation is one of the problems at the level of implementation (application) of laws and regulations. Problems will arise if the problems that occur are not resolved immediately. In addition to many ineffective regulations, many leaders of institutions still think that every problem can be solved by forming a regulation. However, it must be remembered that before taking office, the President and Vice President take an oath according to religion, or promise solemnly before the People's Consultative Assembly or the House of Representatives as follows:<sup>7</sup>

**Presidential (Vice Presidential) Oath:** “By Allah, I swear that I will fulfill the obligations of the President of the Republic of Indonesia (Vice President of the Republic of Indonesia) as well as possible and as fair as possible, uphold the Constitution and carry out all laws and regulations in a straightforward manner and be devoted to Nusa and the Nation.”

Based on the oath, the President has an oath to implement the Act. The time limit to establish implementing regulations in the norm of an Act, is binding and has consequences when not implemented.

The government has launched a de-regulation program to reduce the number of laws and regulations. However, it becomes a dilemma when a law or other regulation is born with many delegations in its body. Delegation of laws and regulations is often interpreted as an order to make equivalent rules or inferior rules in the form of implementing regulations.

In the drafting technique of laws and regulations, it is stated that higher laws and regulations can delegate the authority to regulate further to lower laws and regulations.<sup>8</sup> Delegation of authority can be made from one Law to another, from a Provincial Regulation to another Provincial Regulation, or from a Regency/City Regulation to another Regency/City Regulation.<sup>9</sup> The delegation is listed in the Act article. However, in addition to the delegation, there is also a mandate norm regarding the time limit for stipulating implementing regulations. Norms related to the time limit for the stipulation of implementing regulations are not

---

Mekanisme Evaluasi Peraturan Perundang-Undangan (*Ex Post Review*) Dalam Penataan Dan Pembentukan Peraturan Perundang-Undangan (Jakarta: Universitas Indonesia, 2020).

<sup>3</sup> Taufiqurrohman Syahuri, S.H., M.H. Tafsir Konstitusi Berbagai Aspek Hukum, Jakarta: Prenada Media, 2011, hlm 29.

<sup>4</sup> HAS Natabaya, Sistem Peraturan Perundang-undangan (Jakarta: Konstitusi Press dan Tatanusa, 2008), hlm. 155.

<sup>5</sup> Bagir Manan, Dasar-Dasar Perundang-undangan Indonesia (Jakarta: Ind-Hill, 1992), hlm. 8.

<sup>6</sup> Bappenas, Strategi Nasional Reformasi, hlm. 4.

<sup>7</sup> Pasal 9 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>8</sup> Lampiran II angka 198 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

<sup>9</sup> Lampiran II angka 199 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

recognized in the drafting techniques of laws and regulations listed in Act No. 10 of 2004 concerning the Formation of Laws and Regulations.

**However, Article 74 of Act 12 of 2011 states that:**

- (1) In every Act, the time limit for the promulgation of Government Regulations and other regulations for the implementation of the Act shall be stated.
- (2) The promulgation of Government Regulations and other regulations which are necessary in the administration of government not by order of an Act shall be exempted from the provisions referred to in paragraph (1).

Regarding the time limit for the stipulation is also contained in Appendix II, although it does not explicitly mention the technique of formulating norms for the time limit for stipulating implementing regulations. Number 256 of Appendix II of Act No. 12 Year 2011 states:

“To express the maximum and minimum for a unit of time, use the phrase shortest or longest to express the time period;

Example 1:

The implementing regulations of this Law shall be stipulated no later than 1 (one) year as of the enactment of this Law.”

Of course, the norm regarding the time limit is the norm of a binding legislation and must be implemented. However, if we look at the process of forming laws and regulations, Ministries / Institutions cannot immediately formulate an implementing regulation. There is a mechanism that has been determined in Act 12 of 2011 concerning the Formation of Legislation.

In the process of forming Government Regulations (Peraturan Pemerintah) and Presidential Regulations (Perpres), there are 5 (five) stages, namely planning, drafting, harmonization, ratification, and promulgation. Planning for the preparation of Government Regulations is carried out in a program for the preparation of Government Regulations whose preparation is coordinated by the minister who organizes government affairs in the field of law.<sup>10</sup> This also applies *mutatis mutandis* to planning the preparation of Presidential Regulations. However, if there is an urgent matter, the initiator can apply through the Initiative Permit mechanism to the President.

In the drafting program of the Government Regulation and the drafting program of the Presidential Regulation, the Ministry of Law and Human Rights c.q National Law Development Agency c.q BPHN has criteria regarding what proposals can be included in the drafting program. Priority considerations in the preparation of the government regulation drafting program and the presidential regulation drafting program are:<sup>11</sup>

1. Carry out delegations from higher or equal laws and regulations.
2. Support the National Development Priority Program.
3. Based on the results of analysis and evaluation that recommends changes/establishment of laws and regulations.
4. Support the acceleration of Government policies.
5. Considering the realization of the achievements of the Peraturan Pemerintah and Perpres Progsun in the previous year.

BPHN's consideration in practice is that the element of urgency is prioritized since the planning of the formation of laws and regulations. It is unfortunate to form a law that is not urgently needed, so that the delegation to form it is then ignored. It becomes a dilemma if there is a delegation article to form an implementing regulation, but the regulation has been regulated by regulations that are still valid and still relevant to higher regulatory arrangements so that there is no need for the formation of new implementing regulations, while the mandating regulation provides a time limit for the formation of implementing regulations. Based on the above background, the problem formulation in this study is How is the juridical review of the delegation article of the formation of implementing regulations of a law?

### RESEARCH METHODS

In research there is a type of research used. This type of research is normative juridical research (doctrinal legal research), namely research based on laws and regulations and supported by relevant literature research related to the issues discussed and socio-legal research methodology, namely a legal study by approaching law and social science and then analyzing and making conclusions that are summarized in writing. Based on the view of Peter Mahmoud Marzuki, the definition of legal research is a process of finding legal rules, legal principles, and legal doctrines to provide answers to legal problems and questions that occur.<sup>12</sup> The author also uses a research approach, namely:

1. Statute Approach

This approach is a type of approach where the author in his research approaches through a review of the laws and regulations related to the legal issues being researched.

<sup>10</sup> Pasal 24 Act No, 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>11</sup> Arfan Faiz Muhli, disampaikan pada FGD Pembentukan Peraturan Perundang-Undangan dilingkungan Kementerian Agama pada tanggal 19 Desember 2023.

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Penerbit Kencana, Jakarta, 2007, hlm.35.

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

### 2. Conceptual Approach

A conceptual approach is a type of approach that stems from understanding and principles where it is developed in legal science. Through learning theories and views in legal science, researchers express opinions and views that lead to an understanding of the law, legal concepts and legal principles. related to the problem at hand.<sup>13</sup> This approach is used to observe and consider the urgency in the implementation of the delegation of the formation of implementing provisions of statutory legal regulations.

## DISCUSSION

The Legislative Framework is regulated in the technique of drafting laws and regulations as stipulated in Appendix II of Act No. 12 of 2011 as amended several times last by Act No. 13 of 2022. The Legislative Framework consists of:<sup>14</sup>

1. Title
2. Opening
  - a. The phrase By the Grace of God Almighty
  - b. Position of the Legislation Formator
  - c. Consideration
  - d. Legal Basis
  - e. Dictum
3. Body
  - a. General Provisions
  - b. Regulated Subject Matter
  - c. Criminal Provisions (If Required)
  - d. Transitional Provisions (If Required)
  - e. Closing Provisions
4. Closing
5. Explanation (If Required)

The formulation of norms is contained in Articles contained in the body of a Legislative Regulation. Article is a unit of regulation in a Legislative Regulation that contains one norm and is formulated in one sentence that is brief, clear, and straightforward.<sup>15</sup>

### 1. Article of Delegation

According to the Big Indonesian Dictionary (KBBI), Delegation is an individual who is appointed or sent by a country in a deliberation, handover or delegation of authority from superiors to subordinates in a task environment and must be accountable to his superiors.<sup>16</sup> Meanwhile, according to Ricky W. Griffin, Gregory Moorhead,<sup>17</sup> “delegation is the transfer to others of authority to make decisions and use organizational resources”<sup>18</sup> is a formal grant of authority or power and responsibility to perform certain activities to another party.

If we analyze based on the drafting technique of laws and regulations, the delegation article is included in the delegation of authority subchapter. The delegation article also determines the type of laws and regulations that are granted delegation. In the drafting technique of laws and regulations,<sup>19</sup> The delegation of regulatory authority must be explicitly stated:

- a. the scope of the regulated content material; and
- b. type of laws and regulations.

In addition, the technique of drafting laws and regulations also determines 6 (six) types of delegation articles based on the formulation of delegation,<sup>20</sup> namely:

- a. Delegation articles whose content material has been partially regulated in the delegating laws and regulations and may not be further delegated to lower laws and regulations (subdelegated).
- b. Articles of Delegation whose contents are allowed to be subdelegated.

---

<sup>13</sup> Peter Mahmud Marzuki, *Ibid*, hlm.135

<sup>14</sup> BAB I Lampiran II Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>15</sup> Lampiran II Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan No.77

<sup>16</sup> <https://kbbi.web.id/delegasi> diakses tanggal 1 Juni 2024

<sup>17</sup> Ricky W. Griffin, Gregory Moorhead, *Organizational Behavior*, Eighth Edition, Boston:Houghton Mifflin Company, 2007, hlm 435.

<sup>18</sup> <https://ruslijacub.wordpress.com/> diakses tanggal 3 Juni 2024

<sup>19</sup> Lampiran II Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan No. 200

<sup>20</sup> Loc.it No. 201-2016

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

- c. Articles of Delegation whose content material has not been regulated at all in the delegating Legislation and the content material and may not be subdelegated.
- d. Articles of Delegation whose contents are allowed to be subdelegated.
- e. Article of Delegation in which there is some delegated content material from several articles or paragraphs and can be unified in 1 (one) implementing regulation of the delegating Legislation.

Based on the explanation above, the Delegation Article is an article that only contains norms of delegation of authority from higher regulations to equivalent or lower laws and regulations to regulate a delegated content material. The delegation of authority is given by the Act to the implementing regulations to make regulations governing the mandated content material and not an order to form a new regulation.

### 2. Implementation Regulation

Definition of Regulation according to Anshari (1983) regulation is a mental attitude with awareness and consciousness of obeying or obeying existing rules or prohibitions against something, because it fully understands the importance of certain orders and prohibitions that must be obeyed.<sup>21</sup> According to Hurlock, a rule is something that is set to shape behavior.<sup>22</sup> According to Lydia Harlina Martono, rules are guidelines for humans to live in an orderly and regular manner. If there are no rules, humans can act arbitrarily, without control and difficult to regulate. Meanwhile, according to Brownlee, regulation itself is defined as a set of norms that contain commands and prohibitions. It regulates how individuals should behave, what to do and what not to do.<sup>23</sup> Meanwhile, implementation according to KBBI is the process, method, act of implementing (plans, decisions, and so on).

Implementing Regulations of an Act are Regulations made by the Government (Executive) as the executor of the Act in order to carry out the Act properly. Implementation Regulations have to fulfill:

- a. carrying out delegations from higher regulations, and
- b. not contradictory to higher regulations.

Therefore, the Implementing Regulation of the Act is included in the type of Legislation. Laws and Regulations are written regulations that contain legal norms that are binding in general and are formed or stipulated by state institutions or authorized officials through procedures stipulated in the Laws and Regulations.<sup>24</sup>

The type of Implementing Regulation of an Act is of course a lower regulation in the hierarchy of laws and regulations known in Indonesia. The types of laws and regulations that are lower than the Act are:

- a. Government Regulation.
- b. Presidential Regulation.
- c. Regional Regulation.
- d. Regency/City Regional Regulations.

In addition to the above regulations, Indonesia also recognizes other regulations that are also considered as laws and regulations although they are not included in the type and hierarchy of laws and regulations. These regulations are regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by law or the Government at the behest of the Law, Provincial Legislative Councils, Governors, Regency / City Regional Legislative Councils, Regents / Mayors, Village Heads or equivalent.<sup>25</sup> However, these regulations are recognized and have binding legal force as long as:

- a. ordered by higher laws and regulations; or
- b. formed based on authority.

Government Regulation (Peraturan Pemerintah) is a Legislation stipulated by the President to properly implement the Act.<sup>26</sup> Presidential Regulations are Laws and Regulations stipulated by the President to carry out the orders of higher Laws and Regulations or in exercising governmental powers.<sup>27</sup> Government Regulations can be formed on the basis of the delegation article of an Act or on the basis of the authority granted by the Act. Presidential Regulations are usually based on the needs of the President in exercising governmental powers. Formation on the basis of this authority is usually known as an Independent Government Regulation or Perpres.

<sup>21</sup> Hafi, Anshari, Pengantar Ilmu Pendidikan, (Surabaya: Usaha Nasional 1983), hlm 30.

<sup>22</sup> Hurlock, Elizabeth, Psikologi Perkembangan, (Bandung: Airlangga 2011), hlm 20.

<sup>23</sup> Ngainun Naim, Character Building: Optimalisasi Peran Pendidikan dalam Pengembangan Ilmu & Pembentukan Karakter Bangsa (Jogjakarta: Ar-ruzz Media 2012), hlm 142-143.

<sup>24</sup> Pasal 1 angka 2 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>25</sup> Pasal 8 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

<sup>26</sup> Pasal 1 angka 5 Act 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>27</sup> Pasal 1 angka 6 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.



## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

According to Maria Farida, delegated regulation is the delegation of authority to form higher legislation to lower legislation.<sup>28</sup> However, Government Regulations can also be formed, although the article does not explicitly include a delegation article. According to Ridwan, the government or administration is given the authority to form laws and regulations independently. Legislation made independently is more accurately referred to as regulation as a form of delegated legislation or *gedelegeerde wetgeving*. Examples of delegated legislation are government regulations, presidential regulations, ministerial regulations, regional head regulations, village head regulations.<sup>29</sup>

So the author concludes that Implementing Regulations are Regulations made on the basis of the President's right to form Government Regulations and the authority given by the Act to implementing regulations to make further rules on the mechanism for implementing the content material of higher regulations. If we emphasize on this definition, it can be interpreted that every legislation under the Act which:

- a. type of regulation;
- b. the scope of the regulation;
- c. its content material is in accordance with the delegation of an Act; and
- d. does not contradict.

Is an implementing regulation of the Act, even if the consideration does not include the article of an Act that delegates it.

### 3. Formulation of Articles of Delegation

The norms in the Act are contained in the Articles listed in the body of an Act. These Articles are of course born based on the results of the formulation and discussion passed during the Act Formation process. The Act is formed through a regulated mechanism. There are several stages in the formation of the Act, namely the Planning Stage, Compilation, Discussion, Determination, Enactment, and Dissemination. If we look at some of these stages, then the stage that later gave birth to norms is certainly in the drafting and discussion stages.

There are several differences in the mechanism between the drafting process of the Draft Law which is a Government Initiative and the Initiative of the House of Representatives (DPR). The drafting mechanism within the Government is regulated in Presidential Regulation No. 87 of 2014 on the Implementation Regulation of Act No. 12 of 2011 on the Formation of Laws and Regulations (Perpres 87 of 2014). Meanwhile, the drafting mechanism within the DPR is regulated in DPR Regulation No. 2 of 2020 on Law Formation.

- a. Inter-ministerial Committee (PAK), which is a committee formed consisting of representatives of Ministries/Institutions and/or other related parties that have relevance to the substance of the content material in the Rancangan Act being prepared.
- b. Academic Script Alignment, which is the process of harmonizing the content material in the Academic Script and the Rancangan Act resulting from PAK.
- c. Harmonization, Rounding, and Stabilization of Conception, namely the process of harmonizing the substance of the Draft Legislation and the drafting technique of the Legislation, so that it becomes a Legislation which is an integral unit within the framework of the national legal system.<sup>30</sup> Sehingga dapat disimpulkan bahwa Harmonisasi, Pembulatan, dan Pemantapan Konsepsi adalah sebuah proses untuk melihat keharmonisan materi muatan Rancangan Act dengan Constitution NRI 1945 dan Act lainnya, serta membulatkan konsep Rancangan Act tersebut.

The stages within the House of Representatives are as follows:<sup>31</sup>

- a. formulation of draft law;
- b. p discussion of the draft bill; and
- c. dissemination.

If we look at several mechanisms owned by the Government, there are 2 (two) stages that contain discussions on the Articles in the Draft Act, namely PAK and Harmonization, Rounding, and Stabilization of Conception. PAK is the initial stage of the drafting process. In PAK, discussions are carried out on the initial concept and formulate the norms outlined in the articles. The initial concept of a Draft Act is certainly born based on an Academic Paper.<sup>32</sup> In the Academic Script, the norms formulated to achieve the objectives

---

28 Maria Farida Indrati S. Ilmu Perundang-undangan 2: Proses dan Teknik Pembentukannya hlm. 215-216

29 Ridwan. *Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi*. Yogyakarta: FH UII Press, 2009. hlm 67-68.

30 Pasal 1 angka 1 Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 20 Tahun 2015 Tentang Tata Cara Dan Prosedur Pengharmonisasian, Pembulatan, Dan Pemantapan Konsepsi Rancangan Peraturan Perundang-Undangan.

31 Pasal 53 ayat 1 Peraturan Dewan Perwakilan Rakyat No. 2 Tahun 2020 tentang Pembentukan Undang-Undang.

32 Naskah Akademik adalah naskah hasil penelitian atau pengkajian hukum dan hasil penelitian lainnya terhadap suatu masalah tertentu yang dapat dipertanggungjawabkan secara ilmiah mengenai pengaturan masalah tersebut dalam suatu Rancangan

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

of the Draft Act are of course in the form of narratives. The pouring of norms into articles is of course the task of the Legislation Drafter to then change the general or scientific narrative into the form of legislative norms as listed in Appendix II of Act No. 12 of 2011.<sup>33</sup>

In PAK and Harmonization, each Ministry/Institution representative responded to each article in the Draft Act. The views and responses are of course based on the authority and duties and functions of each Ministry / Institution that have been given by other laws and regulations.

After going through the Harmonization Process, then the Government through a Presidential Letter (Surpres) submits the Draft Act to the DPR for discussion. Before the discussion is carried out, there is a mechanism for preparing a Problem Inventory List by the DPR. After the DIM is submitted by the DPR to the Government, then the Draft Act will enter the discussion stage. DIM contains the views of factions on each Article listed in the Draft Act. Surely there will be many different views and questions on these articles, both in terms of the meaning / interpretation of the norms formulated, suggestions for formulations that are considered more appropriate, to the mechanisms that will be carried out to implement these norms.

In the stages of drafting and discussing the Draft Act within the Government and the Parliament, of course, the formulation of the articles in the Draft Act develops following the dynamics of the discussion. Related to the dynamics of the discussion in the two stages above, of course there will be many differences of opinion that are inevitable. Every person who is a representative in the drafting and discussion of a Draft Act has a different background (in terms of knowledge, field of work, experience, interests) and expectations of how the norms of this Draft Act will be implemented. The law-forming organ is not just seen as a law factory (law factory), but rather a field where various interests and forces in society are competing, so the law-forming organ clearly reflects the configuration of forces and interests in the society.<sup>34</sup>

The bent of mind, education, social origin and so on of the members of the Act-making body will also determine the Act that is made.<sup>35</sup> In formulating the decision, the configuration of power within the Act-making body becomes important, and apart from being determined by the membership composition of the Act-making body, interventions from outside the Act-making body cannot be ignored.<sup>36</sup>

In the context of discussing how the norms of the Draft Act are implemented, the Government as the executive institution that is the executor of the Act must have a concept regarding the technical implementation of the norms of the article. However, the concept does not have to be prepared by the government alone. The DPR as the legislative body is also entitled to provide a technical concept of the implementation of the Act. The concept will provide an overview of whether the Draft Act will be able to achieve the expected goals.

This technical implementation concept must of course be based on proper analysis, both in terms of the ability of the Government and the needs of the community. When this concept has been agreed upon, the concept needs to be formulated in the norms of the articles in the Draft Act. However, it cannot be denied that the content material of the Act only contains the main material, and not the more detailed technical mechanisms, such as institutional coordination, technical implementation within the government, and local wisdom. So that usually in later discussions the more detailed implementation mechanisms will be delegated to lower regulations.

In addition, the consideration to delegate to lower regulations is to make it easier when changing the technical regulations. The authority to form regulations implementing the Act is the President as the Head of Government (Executive). This is stated in the Constitution NRI 1945 which states that the President of the Republic of Indonesia holds the power of government according to the Act<sup>37</sup> and the President stipulates government regulations to properly implement the Act.<sup>38</sup> Of course, with this authority, the formation of implementing regulations for the Act will certainly be easier because it is only carried out by the Government and does not involve the DPR (legislature).

Regarding the technical implementation, in addition to the analysis related to more detailed technical mechanisms, an analysis must also be carried out:

---

Undang-Undang, Rancangan Peraturan Daerah Provinsi, Rancangan Peraturan Daerah Kabupaten/Kota, sebagai solusi terhadap permasalahan dan kebutuhan hukum masyarakat. Lampiran I Angka 1 Act No. 12 Tahun 2011.

<sup>33</sup> Pasal 98 ayat (1) Act No. 12 Tahun 2011 mengatur bahwa ““Setiap tahapan Pembentukan Peraturan Perundang-Undangan mengikutsertakan Perancang Peraturan Perundang-undangan.”

<sup>34</sup> Satjipto Rahardjo, Sosiologi Hukum, Perkembangan, Metode, dan Pilihan Masalah (Surakarta: Muhammadiyah University Press, 2002), hlm. 128.

<sup>35</sup> Ibid

<sup>36</sup> M. Ilham F. Putuhena, Politik Hukum Perundang-Undangan Dalam Upaya Meningkatkan Kualitas Produk Legislasi, Jurnal Rechts Vinding Volume1 Nomor 3, Desember 2012

<sup>37</sup> Pasal 4 ayat (1) ActD NRI 1945

<sup>38</sup> Pasal 5 ayat (2) ActD NRI 1945

## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

- a. the suitability of the type of legislation that will regulate the content material to be delegated.
- b. other laws and regulations that already regulate related to the technical implementation.

However, in the discussion of a Draft Act, the dynamics of the discussions that occur do not always find common ground regarding the concept of implementing the Draft Act. The disagreement can occur due to several possibilities, among others:

- a. The regulated content material is not well understood by the parties conducting the discussion.
- b. An incomplete regulatory concept is prepared by the initiator or the Government as the executor of the Act. so that a decision is made that the concept will be delegated to a lower regulation.

Based on the explanation above, the delegation article is divided into 3 (three) based on the history of its formulation (historical), namely:

### 1. Need

Need delegation article is a delegation article formulated based on an analysis of the need for more technical arrangements and the content material (scope of regulation) is the scope of regulation/content material of lower laws and regulations. However, the content material has not been regulated in other laws and regulations (new content material).

### 2. Reserve

The Reserve delegation article is a delegation article formulated based on an analysis of the need for more technical arrangements and the content material (scope of regulation) is the scope of regulation of lower laws and regulations. However, the content material has been regulated in lower (existing) laws and regulations. So that this delegation article will be a reference when changing existing regulations. If using the language of legislation, the Reserve delegation article will be used "in the event" there is a need to make implementing regulations that replace or revoke the existing regulations.

### 3. Impasse

Article of delegation of necessity (Impasse) is an article of delegation formulated due to the absence of agreement in the drafting or discussion.

## CONCLUSION

The provision regarding the time limit for the stipulation of Government Regulations and other regulations as the implementation of the Act is an order of Article 74 paragraph (1) of Act No. 12 Year 2011 which reads: "In each Act, the time limit for the establishment of Government Regulations and other regulations as the implementation of the Act must be included". Article of Delegation only The establishment of implementing regulations is a continuation of the process of drafting the Act. So that the application of the time limit for the establishment of implementing regulations for the formation of laws and regulations contained in the Act is important as a limitation for the government to immediately ensure that there are implementing regulations for a law. This aims to avoid a law that does not have implementing regulations after several years of enactment and can ensure the effective implementation of the law.

## REFERENCES

- 1) BAB I Lampiran II Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Bappenas. Strategi Nasional Reformasi.
- 2) Frasa 'dibutuhkan' dan 'bermanfaat' dalam konteks ini merupakan suatu penjelasan dari asas 'kedayagunaan' dan 'kehasilgunaan', yang merupakan asas pembentukan peraturan perundangundangan yang baik sebagaimana tersebut dalam Pasal 5 Undang-Undang No. 12 Tahun 2011 beserta penjelasannya. Senada dengan pengertian frasa 'daya guna' menurut Maria Farida Indrati S. Menurut beliau 'daya guna' (efficacy) dari norma dapat dilihat apakah norma itu berdaya guna secara efektif atau tidak atau apakah norma itu ditaati atau tidak. Lebih lanjut lihat: Maria Farida Indrati S, Ilmu Perundang-undangan: Jenis, Fungsi dan Materi Muatan (Yogyakarta: Kanisius, 2007), hlm. 39. Kemudian menurut Bentham, prinsip manfaat dalam bentuk 'kebaikan publik' hendaknya menjadi tujuan legislator untuk merealisasikan melalui legislasi. Lebih lanjut lihat: Jeremy Bentham, Teori Perundang-undangan: Prinsip-Prinsip, Hukum Perdata dan Hukum Pidana (The Theory of Legislation), diterjemahkan oleh Nurhadi (Bandung: Nuansa & Nusamedia, 2010), hlm. 25. sebagaimana dikutip dalam Ade Irawan Taufik dalam tesis Membangun Mekanisme Evaluasi Peraturan Perundang-Undangan (Ex Post Review) Dalam Penataan Dan Pembentukan Peraturan Perundang-Undangan (Jakarta: Universitas Indonesia, 2020).
- 3) Hafi, Anshari. 1983. Pengantar Ilmu Pendidikan. Surabaya: Usaha Nasional.
- 4) <https://kbbi.web.id/delegasi> diakses tanggal 1 Juni 2024
- 5) <https://kbbi.web.id/pelaksanaan> diakses tanggal 2 Juni 2024
- 6) <https://ruslijacob.wordpress.com/> diakses tanggal 3 Juni 2024
- 7) Hurlock, Elizabeth. 2011. Psikologi Perkembangan. Bandung: Airlangga .
- 8) Lampiran II angka 198 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan



## Understanding the Article of Delegation of the Law and the Legal Implications of the Formation of Implementing Regulations by the President But the Time Limit Has Been Passed Mandated by Law

- 9) Lampiran II angka 199 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
- 10) Lampiran II Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan No.77
- 11) Lampiran II Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan No. 200
- 12) M. Ilham F. Putuhena. 2012. "Politik Hukum Perundang-Undangan Dalam Upaya Meningkatkan Kualitas Produk Legislasi". Jurnal Rechts Vinding Volume1 Nomor 3, Desember.
- 13) Manan, Bagir. 1992. Dasar-Dasar Perundang-undangan Indonesia. Jakarta: Ind-Hill.
- 14) Maria Farida Indrati S. Ilmu Perundang-undangan 2: Proses dan Teknik Pembentukannya.
- 15) Martono, Harlina, Lydia. 2006. Belajar Hidup Bertanggung Jawab, Menangkal Narkoba dan Kekerasan. Jakarta: Balai Pustaka.
- 16) Marzuki, Peter Mahmud. 2007. Penelitian Hukum. Jakarta: Penerbit Kencana.
- 17) Muhlizi, Arfan Faiz. 2023. disampaikan pada FGD Pembentukan Peraturan Perundang-Undangan dilingkungan Kementerian Agama pada tanggal 19 Desember 2023.
- 18) Naim, Ngainun. 2012. Character Building: Optimalisasi Peran Pendidikan dalam Pengembangan Ilmu & Pembentukan Karakter Bangsa. Jogjakarta: Ar-ruzz Media.
- 19) Naskah Akademik adalah naskah hasil penelitian atau pengkajian hukum dan hasil penelitian lainnya terhadap suatu masalah tertentu yang dapat dipertanggungjawabkan secara ilmiah mengenai pengaturan masalah tersebut dalam suatu Rancangan Undang-Undang, Rancangan Peraturan Daerah Provinsi, Rancangan Peraturan Daerah Kabupaten/Kota, sebagai solusi terhadap permasalahan dan kebutuhan hukum masyarakat. Lampiran I Angka 1 Act No. 12 Tahun 2011.
- 20) Natabaya, HAS. 2008. Sistem Peraturan Perundang-undangan. Jakarta: Konstitusi Press dan Tatanusa.
- 21) Pasal 1 angka 1 Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 20 Tahun 2015 Tentang Tata Cara Dan Prosedur Pengharmonisasian, Pembulatan, Dan Pemanjapan Konsepsi Rancangan Peraturan Perundang-Undangan.
- 22) Pasal 1 angka 2 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- 23) Pasal 1 angka 5 Act 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- 24) Pasal 1 angka 6 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- 25) Pasal 24 Act No, 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- 26) Pasal 4 ayat (1) Constitution NRI 1945
- 27) Pasal 5 ayat (2) Constitution NRI 1945
- 28) Pasal 53 ayat 1 Peraturan Dewan Perwakilan Rakyat No. 2 Tahun 2020 tentang Pembentukan Undang-Undang.
- 29) Pasal 8 Act No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
- 30) Pasal 9 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- 31) Pasal 98 ayat (1) Act No. 12 Tahun 2011 mengatur bahwa ""Setiap tahapan Pembentukan Peraturan Perundang-Undangan mengikutsertakan Perancang Peraturan Perundang-undangan.""
- 32) Rahardjo, Satjipto. 2002. Sosiologi Hukum, Perkembangan, Metode, dan Pilihan Masalah. Surakarta: Muhammadiyah University Press.
- 33) Ricky W. Griffin, Gregory Moorhead. 2007. Organizational Behavior. Eighth Edition, Boston: Houghton Mifflin Company.
- 34) Ridwan. 2009. Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi. Yogyakarta: FH UII Press.
- 35) Syahuri, Taufiqurrohman. 2011. Tafsir Konstitusi Berbagai Aspek Hukum. Jakarta: Prenada Media.
- 36) Tohari, Ahmad Ahsin. 2016. Hak Konstitusional dalam Hukum Tata Negara Indonesia. Jakarta: Erlangga.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.