



LEGAL POLITICS IN THE FORMATION OF A NEW CIVIL PROCEDURE LAW

Retno Kus Setyowati

Universitas Krisnadwipayana, Jakarta, Indonesia

retno@unkris.ac.id

ARTICLE INFO

Keywords:

Law Formation, Legal Politics, Civil Procedure Law.

ABSTRACT

The purpose of this study is to analyze the politics of law in the formation of a new civil procedural law. The current civil procedural law was formed by the Dutch East Indies government which is still valid based on Article II of the Transitional Rules of the 1945 Indonesian Constitution, and is complemented by other laws and regulations scattered in various laws and regulations. This legal research is Normative legal research. The approach method used is the statutory approach. The results of this study found that the regulations governing civil procedural law are the *Herziene Indonesisch Reglement*, *Rechtreglement voor de Buitengewesten*, *Reglement op de Burgerlijk Rechtsvordering*, as well as various other laws and regulations and also the Supreme Court Circular Letter, Supreme Court Regulation. With the spread of various laws and regulations, it results in overlapping. For this reason, it is necessary to immediately organize it into one complete and systematic regulation, so that it can create the principle of fast, simple and low-cost justice.

A. INTRODUCTION

Based on Article II of the Transitional Rules of the 1945 Constitution, which determines that all existing State Bodies and Regulations are still in effect before a new regulation is made,¹ then one of the regulations that still applies is the Civil Procedure Code which is a concordance regulation of the *Herziene Indonesisch Reglement* (HIR) which translates into an updated Indonesian Reglement,² which is a procedural law that regulates trial procedures in the general court environment, especially for civil and criminal cases on the islands of Java and Madura. This regulation was in effect during the Dutch East Indies era, listed in the State Gazette (*Staatblad*) Number 16 of 1848. Besides the HIR, there is also the *Rechtreglement voor de*

¹ Akhmad Khalimy. "Makna aturan peralihan sebagai politik hukum RUU KUHP (Transformasi dari hukum kolonial ke hukum nasional)." *Jurnal Hukum Progresif* 8, no. 2 (2020): 121.

² Dwi Agustine. "Pembaharuan Sistem Hukum Acara Perdata." *RechtsVinding* 6, no. 1 (2017): 5.

Buitengewesten (RBg) which is a legal instrument that regulates the procedure for conducting trials in courts outside Java and Madura. The RBg applies to both civil and criminal cases, listed in the State Gazette (Staatblad) 1927 Number 227. Although they regulate the same thing, the HIR and RBg have some important differences according to the needs and geographical location of the area where the regulations apply.³

The Begerlijk Wetboek abbreviated as BW in Book Four and the Civil Registry Reglement also contain regulations on Civil Procedure. Civil Procedure Law is contained in Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. Law of the Republic of Indonesia NO. 14 of 1985 concerning the Supreme Court, Law Number 2 of 1986 concerning General Courts, Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts and in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. As for appeals, especially for Java and Madura, Law Number 20 of 1947 on the courts of the Court of Review applies, and subsequently also applies to areas outside Java and Madura.

In addition to the HIR and RBg, the Reglement op de Burgerlijk Rechtvordering (RV) also applies to civil and criminal procedural law as stated in Staatblad 1987 Number 52. For example, regarding incorporation (Voeging), bail (vrijwaring), intervention (interventie) and civil recess (request civieel). There are also Supreme Court Circulars, abbreviated as Circular of the Supreme Court (*Surat Edaran Mahkamah Agung/SEMA*), specifically addressed to subordinate courts (High Courts and District Courts), which contain instructions and guidelines for judges in dealing with civil cases. As for the SEMA that affects the application of civil procedural law, for example, SEMA Number 02 of 1964 contains instructions on the elimination of hostage-taking (gijzeling), while SEMA Number 13 of 1964, SEMA Number 06 of 1975 and SEMA Number 03 of 1978 provide instructions on decisions that can be executed first (*uitvoerbaar bij voorraad*).⁴

HIR, RBg and RV are still used until now, because until now there has been no civil procedural law regulation formed by the Government of Indonesia, while HIR to regulate criminal procedural law has been replaced by Law Number 8 of 1981 concerning Criminal Procedure Law (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*) which is a legal product of the Government of Indonesia. The purpose of criminal procedure law is to seek, obtain or at least approach the material truth, namely the complete truth of a

³ Susan Provenzano and Brian N. Larson. "Civil Procedure as a Critical Discussion." *Nevada Law Journal* 20, no. 3 (2020): 967.

⁴ Sudikno Mertokusumo. *Hukum acara perdata Indonesia*. Yogyakarta: Liberty, 2009.

case.⁵ If the KUHAP has been established 43 years ago, why has the civil procedure law not been replaced with new regulations. This situation raises the question of whether the existence of a national civil procedure law is not urgent to be replaced.

Whereas if examined further the progress of science and technology has clearly brought changes in the system of proof of civil cases, such as electronic evidence and the use of Artificial intelligence (AI),⁶ which means it will bring changes in evidence as stipulated in Article 164 HIR.⁷ In addition, with the spread of civil procedural law regulations applicable to Java and Madura (HIR), outside Java and Madura (RBg) and civil procedural law applicable to European groups (RV) which was also enacted because it was to complement things that were not in the HIR and RBg. of course it is also no longer in accordance with current conditions, which should be one complete regulation and apply equally to all Indonesian people.

Thinking about changes in the existing civil procedural law in the HIR, RBg and RV which cannot reach the current conditions, the renewal of civil procedural law in Indonesia is actually a necessity, and at the same time a challenge that needs to be answered by the legislators. Under these circumstances, to solve the deadlock in resolving a case due to incomplete or lack of regulations, the Supreme Court (*Mahkamah Agung/MA*), plays an active role in filling the vacuum of civil procedural law. by issuing Supreme Court Regulations (*Peraturan Mahkamah Agung/PERMA*), or Supreme Court Circular Letters (SEMA).⁸ In a position like this, it can indeed provide a way out, but seen from the hierarchy of a law and regulation, it will have a legal consequence where a lower law and regulation must not conflict with a higher regulation, considering that the Supreme Court Regulation and the Supreme Court Circular Letter are lower than the law, because the HIR, RBg and RV are civil procedural law laws.

The Supreme Court's basis for issuing Perma and Perma is also not wrong, as stipulated in Article 14 paragraph (1) of Law Number 14 of 1970 concerning the Principles of Judicial Power which states: "the court may not refuse to examine and try a case submitted on the pretext that the law is not

⁵ Yulia Dessani, Bella Afrilia, and Sasmi Nelwati. "Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia." *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2023): 121.

⁶ Fauziah Lubis and Sofia Ramadhani Purba. "Analisis Kritik Pembuktian Elektronik Dalam Hukum Acara Perdata: Tantangan Dan Prospek Di Era Digital." *Judge: Jurnal Hukum* 5, no. 02 (2024): 41.

⁷ Pamela K. Bookman and Colleen F. Shanahan. "A Tale of Two Civil Procedures." *Columbia Law Review* 122, no. 5 (2022): 1189.

⁸ Raihan Andhika Santoso, Elan Jaelani, and Utang Rosidin. "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Indonesia." *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 11.

or unclear, but is obliged to examine and try it". The author argues that the Perma should not be too long to fill the void of procedural law, as in the procedural law for class actions regulated by Perma Number 1 of 2002.⁹ The regulation proves that judges also have the function of making efforts in transforming society through law.¹⁰ With the practice of resolving civil cases using such patchwork regulations, whether the HIR/RBg and RV should still be maintained as civil procedural law. Legal reform does not mean totally changing the entire existing or currently enforced law, but can also be done by perfecting articles that are no longer in accordance with the new provisions, adding new provisions, or revoking articles that are no longer relevant. Thus, the formation of a new civil procedural law can actually be done by maintaining the articles in the HIR/RBg and RV by adding and perfecting provisions that are no longer in accordance with the current conditions and circumstances of society. However, until the end of 2024 there has been no discussion between the Government and the House of Representatives (*Dewan Perwakilan Rakyat/DPR*). This condition raises a question" : Is there no legal politics from the Government or the DPR to replace the current civil procedure law with a new civil procedure law?

Many writings take the study of civil procedure law, both the authors who are members of the association of civil procedure law lecturers and outside the association, but the topics and studies written and researched are different, so the author guarantees the authenticity of the paper entitled Political Law in the Formation of New Civil Procedure Law.

B. RESEARCH METHODS

The method used is normative legal research with various positive legal approaches. With primary legal material, namely the Law which is an approach from all laws and regulations related to the legal issues being studied.¹¹ Normative approach related to the problem, there is no legal politics to update the legislation, especially the civil procedural law which still has regional differences for rules between Java, Madura and outside Java and Madura. Although there are different articles, the procedural law is not much different. The RV, which is a civil procedure law for European groups, is still in effect to complement the HIR and RBg, as well as the enactment of the Supreme Court Regulation and the Supreme Court Circular Letter. While secondary legal

⁹ Suparto Suparto, and Zulkifli Zulkifli. "Position of Circular Letter of the Supreme Court as a Follow up from the Decision of the Constitutional Court Number 37/PUU-IX/2011." *Awang Long Law Review Journal* 5 (2022): 227.

¹⁰ Latifah Nur'Aini, Andriani Kartika Hapsari, and Miecko Wahyu Gunawan. "Analisis Tentang Gugatan Class Action Yang Diperiksa Dengan Acara Perdata Biasa (Studi Kasus Putusan Mahkamah Agung Nomor: Nomor 600 K/Pdt/2010)." *Verstek* 1, no. 3 (2013): 27.

¹¹ Peter Mahmud Marzuki. *Penelitian hukum*. Jakarta: Kencana Prenada Media 55, 2005.

materials are books, expert opinions, writings from various materials for the formation of laws.

C. DISCUSSION

1. Legal Politics in the Formation of Civil Procedure Law

There is no society that does not change,¹² although changes in one society with another are not the same. As a result of developments in various aspects of life that affect social interaction, human behavior is not merely biological behavior, but rather meaningful sociological and ethical behavior because it is based on a philosophy of the meaning of life itself, both concerning the purpose of personal human life and leading human life in groups or communities. What is important and always needs to be considered is that legal institutions and legal norms as well as community behavior are in accordance with the philosophy of life that the Indonesian people embrace as a truth.¹³

The enactment of law in a country is determined by the legal politics of the country concerned,¹⁴ in addition to the legal awareness of the people in the country itself.¹⁵ Legal politics has an important role in the formation of legislation and Indonesian national law,¹⁶ considering that legal politics is used as a basic guideline in the process of determining values, determining, forming and developing national law in Indonesia. Likewise, as the opinion of Muhammad Radhie states that legal reform has a close relationship with legal politics.¹⁷

Regarding the definition of legal politics, in fact there are differences of opinion among experts, as stated by Muhammad Radhi, that legal politics is a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction in which the law will be developed.¹⁸ On the other hand, Padmo Wahyono explains that legal politics can be

¹² Soekanto Soerjono. *Teori sosiologi tentang perubahan sosial*. Jakarta: Ghalia Indonesia, 1983.

¹³ Halida Zia, Nirmala Sari, and Ade Vicky Erlita. "Pranata Sosial, Budaya Hukum Dalam Perspektif Sosiologi Hukum." *Datin Law Jurnal* 1, no. 2 (2020): 39.

¹⁴ Yulia Dessani, Bella Afrilia, and Samsi Nelwati. "Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia." *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2023): 123.

¹⁵ Sukardi Sukardi, and Hadi Rahmat Purnama. "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 176.

¹⁶ Zico Junius Fernando. "Legal Politics Formation of Legislation in the Indonesia National Legal System." *Jurnal Hukum Progresif* 10, no. 1 (2022): 29.

¹⁷ Nelli Leonenko Pomaza-Ponomarenko, Alina, Viktoriia Cherniahivska, Iryna Lehan, and Galyna Puzanova. "Legal reform and change: research on legal reform processes and their impact on society. Analysis of factors that facilitate or hinder legal change, including political, social, and economic factors." *Journal of Law and Sustainable Development* 11, no. 10 (2023): e1857.

¹⁸ Pratolo Saktiawan, Febrian Dirgantara, Didit Darmawan, Saifuddin Isnaini, and Argho Waluyo. "Evaluating the Effectiveness of Investigation and Prosecution to Improve the Integrity of Law Enforcement in Indonesia." *Judge: Jurnal Hukum* 6, no. 01 (2025): 39.

interpreted as a basic policy that determines the direction, form and content of the law to be formed.¹⁹ Thus legal politics is a critical study to obtain a comprehensive understanding of the purpose of legal products based on the relationship between politics, law, and legal products. One of the functions of legal politics is to create boundaries that must be obeyed by the authorities when forming legal products in accordance with the concept of the rule of law.²⁰

Zainal Arifin Mochtar et al.²¹ that the system and method of law formation must make a sense of justice and the welfare of the people a priority. This is because legal development and national development require laws and all processes of formation, planning, preparation, discussion, ratification, and enactment to spread and carry out the mandate of the 1945 Constitution and become a bridge for the making and enactment of implementing regulations under it.²²

Political law seeks to create rules that will determine how humans should act.²³ The politics of law investigates what changes should be made in the current law so that it becomes in accordance with social reality, but the politics of law is also a tool in the hands of the authorities to make laws for their interests or their groups.²⁴ Against laws and regulations made for the sake of legalizing power or for the benefit of their group, in general, there will be rejection of these laws and regulations, such as the enactment of the Ciptakerja Law which received strong resistance from the community so that the last one was amended to Law Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2023 concerning Job Creation into Law and it turns out that this Law has been tested to the Constitutional Court 11 times.²⁵

¹⁹ Laurent Pech. "The rule of law as a well-established and well-defined principle of EU law." *Hague Journal on the Rule of Law* 14, no. 2 (2022): 112.

²⁰ Abdul Aziz and Andi Sri Rezki. "The Effect of Agrarian Law in the Development of Legal Politics in Indonesia." *International Journal of Education and Literature* 2, no. 2 (2023): 137.

²¹ Zainal Arifin Mochtar, Idul Rishan, and Ayu Atika Dewi. "Indonesian Judicial Commission in Appointment Ad Hoc Judges: In Search of Constitutional Modality." *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 2 (2022): 222.

²² Rahmansyah Fadlul Al Karim Rambe. "Implementation Of Pancasila Values as zthe Basis of the State in the Formation of Legislation and Regulations." *Lex Societas: Journal of Law and Public Administration* 1, no. 2 (2024): 95.

²³ Vincentius Setyawan. "Pancasila As a Philosophical Basis of Law Formation in Indonesia." *Nusantara: Journal Of Law Studies* 2, no. 1 (2023): 5.

²⁴ Reda Manthovani. "The Enforcement of Criminal Law: Examining the Validity and Human Rights Foundation of Online Criminal Trials in Indonesia." *International Journal of Criminal Justice Sciences* 18, no. 2 (2023): 29.

²⁵ Sunardi Purwanda, Wiwin Wiwin, Johamran Pransisto, and Andi Musran. "Testing the Omnibus Law Concept in Legal Theory: Evaluating its Effectiveness as a Tool for Social Engineering." *Indonesia Private Law Review* 5, no. 1 (2024): 18.

In order for the formation of laws and regulations to be accepted by the community, legal politics must be assisted by legal sociology, comparative law and legal history to find out whether a reform is needed in the field of law, but it is still the legal politics that determines whether the legal reform can be implemented in whole or in part or it is still not time to be held in connection with the situation, circumstances and facts at a certain time. If legal reform has been implemented, legal politics must also prepare for the justice-seeking public to accept the legal reform.²⁶

Legal products are one of the important means to achieve the state's goals as stated in the preamble of the 1945 Constitution, for this reason the national development plan must be in harmony with the legal politics of law formation. The 2005-2025 National Long-Term Development Plan (*Rencana Pembangunan Jangka Panjang Nasional*/RPJPN) calls for the improvement of the national legal system by updating and improving existing laws and regulations and issuing laws and regulations that are in accordance with the conditions of the times.

Legislation is part of the law that is deliberately made by state institutions,²⁷ thus legislation is unlikely to appear suddenly, because legislation is made with certain objectives and reasons. The objectives and reasons for the formation of laws and regulations can vary. Various kinds of objectives and reasons for the formation of a legislation are referred to as legal politics (legal policy). In the formation of laws and regulations, legal politics is very important. There are at least two reasons: first, as a reason why the formation of a law is needed. Second, to determine what is to be translated into legal sentences and become the formulation of articles. The two reasons are important, because the existence of laws and regulations and the formulation of articles is a bridge between the legal politics stipulated and the implementation of the legal politics in the implementation stage of the laws and regulations. This is because between the implementation of laws and regulations, there must be consistency and a close correlation with what is determined as legal politics. The implementation of the law is the achievement of what is desired in the legal politics that has been set (furthering policy goals).²⁸

²⁶ Adam Imam Hamdana. "The Politics of Legislation in the National Legal System." *Veteran Law Review* 7, no. 2 (2024): 156.

²⁷ Christ Aristyan and Emirza Henderlan Harahap. "Efforts to Implement the Principle of Coordination Between Police Investigators and Prosecutors in Processing Criminal Cases in the Jurisdiction of the Pekanbaru Police Station." *Anayasa: Journal of Legal Studies* 2, no. 1 (2024): 89.

²⁸ Edi Purwanto and Helmi Helmi. "Legal Politics of Land Dispute Settlement Post the Implementation of the Work Copyright Law in Realizing Security and Justice of Land Rights in Indonesia." *JHK: Jurnal Hukum dan Keadilan* 1, no. 4 (2024): 21.

Legal politics can be distinguished in two sizes, the first measure is the politics of law which is the basic reason for the enactment of a legislation or can be referred to as a basic policy, such as the Supreme Court Law was formed with the aim of providing a legal basis for the Supreme Court itself to provide legitimacy for the decisions it makes. The second measure of legal politics is the purpose or reason that arises behind the formation of a legislative regulation, which is also referred to as the enactment policy. In a developing country, the existence of enforcement policy is very dominant, because the role of legislation will be used as a political instrument by the government or its ruler, both positive and negative. The positive thing about the use of laws by the government is in order to advance the political life of citizens, improve the economy, determine the rights and obligations of citizens and so on, while negative ones such as laws are used as legitimacy for power which raises the term Rule by Law which means that the law is used by the authorities as a tool to control society and maintain their power, and not rule of law.²⁹

According to Daniel S. Lev colonial law was abandoned,³⁰ because colonial law is a complicated legal system, because an independent country the legal system made for society is much different from the laws enacted previously which were inherited from the colonizing country. This is because the laws of the past are no longer suitable for the needs of the nation's society, which in terms of its growth after independence has undergone many changes. Law is a reflection of the state of society at a certain time, so it will be difficult to maintain the old law for the new atmosphere of life.³¹ The advancement of science and technology brings the consequence of the need to change things that are no longer in accordance with existing conditions, so that the law can guarantee the upholding of justice.³²

In general, the formation of laws can be categorized in two ways. The first is the formation of laws with a top down process, in which individuals who occupy power or positions in the government envision the direction of the law. This vision is then translated into law, including laws. It often happens that in practice the values adopted by government authorities are not the same as the values desired by the community, even contradictory.³³ The successful

²⁹ Hasbi Hasan and Cecep Mustafa. "The Politics of Law of Sharia Economics in Indonesia." *Lex Publica* 9, no. 1 (2022): 38.

³⁰ Daniel S. Lev. "The Lady and the Banyan Tree: Civil-Law Change in Indonesia." *The American Journal of Comparative Law* 14, no. 2 (1965): 288.

³¹ Teuku Mohammad Radhie. "Current Legal Research in Indonesia." *International Journal of Law Libraries* 7, no. 3 (1979): 217.

³² Muhammad Doing, Darma Kartian, and Muhammad Irsyadul Ibad. "Strengthening the Constitutional Law System (Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia)." *Journal Equity of Law and Governance* 5, no. 1 (2024): 117.

³³ Tongat Tongat. "The ambiguous authority of living law application in new Indonesian penal code: between justice and the rule of law." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 194.

implementation of the law will depend on law enforcement, because without strong law enforcement, the law will be useless or will become a mere symbol.

The second is the formation of laws by a Bottom Up process, in which individuals who hold power or positions in government act as facilitators. The community determines the values that need to be regulated. In this process, law enforcement does not need to be strict, considering that the majority of people have embraced the values contained in the law. Law enforcement is carried out against the minority of society so that they want to act in accordance with what is adopted by the majority of society.

Of the two kinds of law-making processes in Indonesia, in practice the most dominant is the Top Down method. The government is in a position to visualize and make rules that accommodate values that are different from those prevailing or adopted by the community. The consequences of this Top Down method, if the government does not manage it seriously and carefully, will lead to the consequence that the government-formed laws and regulations will not be able to carry out their function in regulating society, and will even create uncertainty in implementation, because people will not obey the laws and regulations. The top down process in the formation of laws and regulations dominates the formation of laws and regulations, this is due to several reasons. Firstly, democracy in Indonesia has not run perfectly, because the wishes of the people are still very easy to be manipulated by power holders, which has the consequence that the values that live in society are difficult to be outlined in the law. Secondly, the Top Down process is considered the easiest process to carry out, given that the existing culture in society is a culture to follow and obey the leadership. Third, civil society in Indonesia has not yet been fully formed, which provides opportunities for policy makers to carry out various maneuvers.

2. Civil Procedure Law Reform

Taking the opinion of Romli Artasasmita,³⁴ which argues that National Law in Indonesia as a system has not been formed holistically, comprehensively or has not been enriched by the values of the life of indigenous peoples to adapt to the life of developed societies. The attempt to state that there is a national legal system has proven to be only an inheritance of the legal system of the Dutch East Indies government which adheres to the civil law system alone, which is forced into force in the midst of customary law communities. Amendments to the Criminal Code in the post-independence period of the Republic of Indonesia and after the reform era, among others, were carried out by including provisions on air piracy and the prohibition of

³⁴ Romli Artasasmita. *Integrative Legal Theory: Reconstruction of Development Legal Theory and Progressive Legal Theory*. Yogyakarta: Genta Publishing, 2012.

the ideology of marxism-communism. The formation of the national legal system until now is still unfinished and questionable before and after Indonesia entered the reform era, the formation is more the result of harmonizing the influence of foreign law or international law into national legislation.³⁵

This condition means that until now, the State of Indonesia does not have a national legal system as envisioned by the Indonesian people at the time of the proclamation of independence. The Indonesian national legal system is a system that is continuing to become, or in other words, it can be said that the Indonesian national legal system is still an *Ius Constituendum*.³⁶ In addition to being negligent in the formation of laws and regulations, the DPR and the government also seem to be less careful, less careful and do not comply with the principles adopted by the constitution when forming laws and regulations. This can be seen from the number of laws and regulations that have been tested for constitutionality through judicial review in the Constitutional Court.³⁷

Civil procedural law aims to protect the rights of individuals in civil disputes. These rights include the right to present relevant evidence and arguments, the right to obtain a judgment based on the law and facts, and the right to enforce the court's decision. As legislation, the Civil Code and the Code of Civil Procedure should ideally contain complete provisions that form the basis for resolving civil matters. For this reason, in order for laws and regulations to work as expected, it is necessary to conduct in-depth research when drafting them.³⁸ Research is carried out to find out what is a problem in society, what should be regulated, whether the provisions to be regulated are realistic enough, what is the supporting infrastructure, whether there are conflicting laws and regulations, especially if the regulation is taking or enforcing regulations from other countries and so on. This information is important for the legislators, so that they are more realistic in making legal products as their implementation.

In order for the legislation to contain the content as expected, the making of laws and regulations will be more affdol if it is preceded by an academic paper, but in practice academic papers are often made carelessly, even academic papers are made just to spend the budget, even often academic papers are submitted together with the Draft Law (*Rancangan*

³⁵ Widya Castrena Budi Dharma, Taufiqurrohman Syahuri, and Ahmad Ahsin Thohari. "Analysis of Law Number 20 of 2023 and the Role of Academic Manuscripts in Indonesian Law Formation." *Research Horizon* 5, no. 2 (2025): 38.

³⁶ Agus Darmawan. "Indonesia's Tax Amnesty Law Based on the Perspective of the Law as An Allocative System." *Yustisia* 5, no. 3 (2016): 515.

³⁷ Otong Rosadi. "Hukum Kodrat, Pancasila dan asas hukum dalam pembentukan hukum di Indonesia." *Jurnal Dinamika Hukum* 10, no. 3 (2010): 279.

³⁸ Noor Muhammad Aziz. "The Urgency of Research and Legal Studies in the Formation of Legislation." *Rechts Vinding Journal: National Legal Development Media* 1 (2012): 23.

Undang-Undang/RUU),³⁹ so that as a complement, the initiator should submit an academic paper first, followed by the submission of a bill, because the discussion is carried out based on an academic paper. The discussion of a bill without an academic paper will create an omission of errors, which in the end will result in many requests for annulment of the law to the Constitutional Court (*Mahkamah Konstitusi*/MK).⁴⁰ However, it turns out that the academic paper itself is facultative, as stipulated in Presidential Regulation Number 68 of 2005. Paragraph (1)⁴¹ stipulates: "the proponent in preparing a Draft Law may first prepare an Academic Paper, regarding the material to be regulated in the Draft Law". The existence of the word "may", can lead to multiple interpretations, namely that academic papers can be a must and can not be a must, as a result it can happen that the formation of laws and regulations ignores the existence of academic papers.⁴²

Empirically, the researcher argues that the legal politics for the establishment of a civil procedure law to replace the procedural laws that are still scattered in various regulations, namely HIR, RBg, RV, PERMA, SEMA, Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court does not yet exist, although since 1967 the Government has compiled a Draft Law on Civil Procedure Law that has been included in the National Legislation Program (*Program Legislasi Nasional*/Prolegnas) but until now it has not yet been completed as a law. The Civil Procedure Law Bill was included in the Prolegnas for the 2015-2019 period, but the government has not yet completed the drafting. It was again included in the medium-term prolegnas list for the 2020- 2024 period. Then in 2021 the Civil Procedure Law Bill was included in the priority prolegnas list. However, even though it has been included in the priority Prolegnas it turns out that until the end of 2024 it has not been discussed with the DPR, so it can be said that the Civil Procedure Law Bill is not a priority for the formation of a new Civil Procedure Law.

The RUU on Civil Procedure Law (*Hukum Acara Perdata*/HAP) is a regulation that regulates the steps and procedures for civil settlements in court. The Civil Procedure Law Bill was proposed by the Government on December 17, 2019 and has entered the discussion stage since February 16,

³⁹ Yanti Amelia Lewerissa, Deassy Antoneta Hehanussa, and Sherly Adam. "Criminal Policy on Destructive Fishing Activities in Serutbar, Indonesia." *Jambura Law Review* 5, no. 2 (2023): 239.

⁴⁰ Daffa Ladro Kusworo. "Prospective Regulation of Private Sector Legal Compliance Audits Through the Draft National Legal Guidance Law as A Manifestation of Good Corporate Governance." *Audito Comparative Law Journal (ACLJ)* 5, no. 3 (2024): 165.

⁴¹ Presidential Regulation No. 68/2005 on the Procedures for Preparing Draft Laws, Draft Government Regulations, and Draft Presidential Regulations.

⁴² Delfina Gusman. "Urgensi Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Yang Baik." *Masalah-Masalah Hukum* 40, no. 3 (2011): 299.

2022, and the discussion of the Civil Procedure Law Bill will be continued by the Parliament for the 2024-2029 period.⁴³

In the Civil Procedure Bill there are changes that add to the civil procedural law regulated in the HIR/RBg, such as, Mechanisms for implementing extraordinary legal remedies,⁴⁴ Prorogation institution, Evidence, Cassation application, Arbitration implementation,⁴⁵ Arrangements for fast, short, low cost events (small claim court),⁴⁶ Group representative lawsuits,⁴⁷ Execution of civil decisions.⁴⁸

Although it contains changes that add and perfect, it turns out that there are many things that have not been accommodated in the Civil Procedure Law Bill, so it needs to be considered in the new Civil Procedure Law Bill, including: The Civil Procedure Law Bill does not yet regulate the procedures and procedures for class actions, the Civil Procedure Law Bill needs to contain an inclusive procedure so that it is easily accessible so that it is easily accessible to various parties, the Civil Procedure Law Bill needs to emphasize an integrated case settlement process, which includes trials, summoning parties, and combining cases electronically,⁴⁹ The Civil Procedure Law Bill needs to regulate the complete loading of decisions in electronic trials, the time limit for legal remedies with the implementation of electronic trials. The Civil Procedure Bill needs to regulate restrictions on resistance or rebuttal legal efforts made by third parties as regulated in Article 195 paragraph (6) HIR / Article 206 paragraph (6) RBg, as well as litigants as regulated in Article 207 HIR / Article 255 RBg, with the aim of hindering the implementation of civil decisions that have permanent legal force. Because resistance like this will make the execution of civil decisions become long-winded and will contradict the principles of fast, simple and light costs.

Civil Procedure Law Bill, Academic Paper and Bill prepared by the Government, and included in the Priority Bill for 2025, and based on

⁴³ Nur Kholik, Wahyu Hidayat, and Muhammad Asyraf. "Responding to Allegations of Subsidy Violations: Indonesia's Compliance under the Agreement on Subsidies and Countervailing Measure." *Jurnal Hukum Novelty* (1412-6834) 14, no. 2 (2023): 28.

⁴⁴ Syahrul Sitorus. "Upaya Hukum Dalam Perkara Perdata (Verzet, Banding, Kasasi, Peninjauan Kembali dan Derden Verzet)." *Hikmah* 15, no. 1 (2018): 67.

⁴⁵ Dijan Widiyowati. "The Crime of Corruption Codified in Law Number 1 of 2023." *Journal of Law and Sustainable Development* 11, no. 11 (2023): e1860.

⁴⁶ Mizaj Iskandar and Liza Agustina. "Penerapan Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Kumulasi Cerai Gugat dan Harta Bersama di Mahkamah Syar'iyah Banda Aceh." *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 1 (2019): 248.

⁴⁷ Alisia Revalina Memah. "Kajian Yuridis Gugatan Class Action Dalam Hukum Positif di Indonesia." *Lex Privatum* 11, no. 3 (2023): 46.

⁴⁸ Anang Shophan Tornado. "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian case study." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 329.

⁴⁹ Disriani Latifah Soroinda and A. A. R. S. Nasution. "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata." *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 387.

information from Prof. Eva Laila Kintang⁵⁰ as the compiler of the Academic Paper of the Civil Procedure Law Bill, an audience has been held with the Minister of Law as a process of maturation of the Bill considering the Civil Procedure Law Bill originated from the government.

Based on the process of submitting a bill that has been started from 1967 until now it has not increased to become a law, the researcher argues that legal politics in the field of the formation of civil procedural law legislation is very slow even though the development of science and technology is very rapid, which has consequences for changes in evidence in civil cases, as well as the methods of proof itself. This is very different when compared to regulations in criminal procedure where the HIR/RBg for criminal cases has been established by Law Number 8 of 1981 concerning the Criminal Procedure Code, which was established 43 years ago, this raises the thought that the government thinks that the existence of a new civil procedure law is not a priority compared to criminal procedure law.

D. CONCLUSION

The establishment of a new Civil Procedure Law is very relevant to be implemented, because it meets the philosophical, sociological and juridical requirements. Philosophically, many articles in the HIR and RBg are not in accordance with the prevailing view of life in Indonesian society, sociologically the provisions in the HIR and RBg cannot accommodate the progress of science and technology, and juridically the regulations on civil procedure law are scattered in various legal regulations, on the one hand there are differences in regulations because the HIR applies to Java and Madura, while the RBg applies to outside Java and Madura, so there is no unification and codification. This condition has not led to a strong legal politics from the Government or the Parliament to immediately ratify the new civil procedure law that replaces the old civil procedure law.

BIBLIOGRAPHY

Journals:

- Agustine, Dwi. "Pembaharuan Sistem Hukum Acara Perdata." *RechtsVinding* 6, no. 1 (2017): 1-7.
- Aristyan, Christ, and Emirza Henderlan Harahap. "Efforts to Implement the Principle of Coordination Between Police Investigators and Prosecutors in

⁵⁰ Anna A. Dmitrieva, and Pavel S. Pastukhov. "Concept of Electronic Evidence in Criminal Legal Procedure." *Journal of Digital Technologies and Law* 1, no. 1 (2023): 28.

- Processing Criminal Cases in the Jurisdiction of the Pekanbaru Police Station." *Anayasa: Journal of Legal Studies* 2, no. 1 (2024): 83-92.
- Aziz, Abdul, and Andi Sri Rezki. "The Effect of Agrarian Law in the Development of Legal Politics in Indonesia." *International Journal of Education and Literature* 2, no. 2 (2023): 131-143.
- Aziz, Noor Muhammad. "The Urgency of Research and Legal Studies in the Formation of Legislation." *Rechts Vinding Journal: National Legal Development Media* 1 (2012): 17-31.
- Bookman, Pamela K., and Colleen F. Shanahan. "A Tale of Two Civil Procedures." *Columbia Law Review* 122, no. 5 (2022): 1183-1242.
- Darmawan, Agus. "Indonesia's Tax Amnesty Law Based on the Perspective of the Law as An Allocative System." *Yustisia* 5, no. 3 (2016): 509-527.
- Dessani, Yulia, Bella Afrilia, and Sasmi Nelwati. "Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia." *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2023): 117-128.
- Dharma, Widya Castrena Budi, Taufiqurrohman Syahuri, and Ahmad Ahsin Thohari. "Analysis of Law Number 20 of 2023 and the Role of Academic Manuscripts in Indonesian Law Formation." *Research Horizon* 5, no. 2 (2025): 33-44.
- Dmitrieva, Anna A., and Pavel S. Pastukhov. "Concept of Electronic Evidence in Criminal Legal Procedure." *Journal of Digital Technologies and Law* 1, no. 1 (2023): 24-51.
- Doing, Muhammad, Darma Kartian, and Muhammad Irsyadul Ibad. "Strengthening the Constitutional Law System (Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia)." *Journal Equity of Law and Governance* 5, no. 1 (2024): 113-122.
- Fernando, Zico Junius. "Legal Politics Formation of Legislation in the Indonesia National Legal System." *Jurnal Hukum Progresif* 10, no. 1 (2022): 25-36.
- Gusman, Delfina. "Urgensi Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Yang Baik." *Masalah-Masalah Hukum* 40, no. 3 (2011): 297-304.
- Hamdana, Adam Imam. "The Politics of Legislation in the National Legal System." *Veteran Law Review* 7, no. 2 (2024): 153-162.
- Hasan, Hasbi, and Cecep Mustafa. "The Politics of Law of Sharia Economics in Indonesia." *Lex Publica* 9, no. 1 (2022): 30-57.
- Iskandar, Mizaj, and Liza Agustina. "Penerapan Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Kumulasi Cerai Gugat dan Harta Bersama di Mahkamah Syar'iyah Banda Aceh." *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 1 (2019): 241-265.

- Khalimy, Akhmad. "Makna aturan peralihan sebagai politik hukum RUU KUHP (Transformasi dari hukum kolonial ke hukum nasional)." *Jurnal Hukum Progresif* 8, no. 2 (2020): 121.
- Kholik, Nur, Wahyu Hidayat, and Muhammad Asyrafi. "Responding to Allegations of Subsidy Violations: Indonesia's Compliance under the Agreement on Subsidies and Countervailing Measure." *Jurnal Hukum Novelty* (1412-6834) 14, no. 2 (2023): 23-65.
- Kusworo, Daffa Ladro. "Prospective Regulation of Private Sector Legal Compliance Audits Through the Draft National Legal Guidance Law as A Manifestation of Good Corporate Governance." *Audito Comparative Law Journal (ACLJ)* 5, no. 3 (2024): 155-173.
- Lev, Daniel S. "The Lady and the Banyan Tree: Civil-Law Change in Indonesia." *The American Journal of Comparative Law* 14, no. 2 (1965): 282-307.
- Mochtar, Zainal Arifin, Idul Rishan, and Ayu Atika Dewi. "Indonesian Judicial Commission in Appointment Ad Hoc Judges: In Search of Constitutional Modality." *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 2 (2022): 211-225.
- Lewerissa, Yanti Amelia, Deassy Antoneta Hehanussa, and Sherly Adam. "Criminal Policy on Destructive Fishing Activities in Serutbar, Indonesia." *Jambura Law Review* 5, no. 2 (2023): 235-250.
- Lubis, Fauziah, and Sofia Ramadhani Purba. "Analisis Kritik Pembuktian Elektronik Dalam Hukum Acara Perdata: Tantangan Dan Prospek Di Era Digital." *Judge: Jurnal Hukum* 5, no. 02 (2024): 39-47.
- Manthovani, Reda. "The Enforcement of Criminal Law: Examining the Validity and Human Rights Foundation of Online Criminal Trials in Indonesia." *International Journal of Criminal Justice Sciences* 18, no. 2 (2023): 27-39.
- Memah, Alisia Revalina. "Kajian Yuridis Gugatan Class Action Dalam Hukum Positif di Indonesia." *Lex Privatum* 11, no. 3 (2023): 23-54.
- Nur'Aini, Latifah, Andriani Kartika Hapsari, and Miecko Wahyu Gunawan. "Analisis Tentang Gugatan Class Action Yang Diperiksa Dengan Acara Perdata Biasa (Studi Kasus Putusan Mahkamah Agung Nomor: Nomor 600 K/Pdt/2010)." *VERSTEK* 1, no. 3 (2013): 21-43.
- Pech, Laurent. "The rule of law as a well-established and well-defined principle of EU law." *Hague Journal on the Rule of Law* 14, no. 2 (2022): 107-138.
- Pomaza-Ponomarenko, Alina, Nelli Leonenko, Viktoriia Cherniahivska, Iryna Lehan, and Galyna Puzanova. "Legal reform and change: research on legal reform processes and their impact on society. Analysis of factors that facilitate or hinder legal change, including political, social, and economic factors." *Journal of Law and Sustainable Development* 11, no. 10 (2023): e1854-e1854.

- Provenzano, Susan, and Brian N. Larson. "Civil Procedure as a Critical Discussion." *Nevada Law Journal* 20, no. 3 (2020): 967.
- Purwanda, Sunardi, Wiwin Wiwin, Johamran Pransisto, and Andi Musran. "Testing the Omnibus Law Concept in Legal Theory: Evaluating its Effectiveness as a Tool for Social Engineering." *Indonesia Private Law Review* 5, no. 1 (2024): 11-22.
- Purwanto, Edi, and Helmi Helmi. "Legal Politics of Land Dispute Settlement Post the Implementation of The Work Copyright Law in Realizing Security and Justice of Land Rights in Indonesia." *JHK: Jurnal Hukum dan Keadilan* 1, no. 4 (2024): 14-23.
- Radhie, Teuku Mohammad. "Current Legal Research in Indonesia." *International Journal of Law Libraries* 7, no. 3 (1979): 211-219.
- Rambe, Rahmansyah Fadlul Al Karim. "Implementation Of Pancasila Values as the Basis of the State in the Formation of Legislation and Regulations." *Lex Societas: Journal of Law and Public Administration* 1, no. 2 (2024): 91-98.
- Rosadi, Oton. "Hukum Kodrat, Pancasila dan asas hukum dalam pembentukan hukum di Indonesia." *Jurnal Dinamika Hukum* 10, no. 3 (2010): 277-284.
- Saktiawan, Pratolo, Febrian Dirgantara, Didit Darmawan, Saifuddin Isnaini, and Argho Waluyo. "Evaluating the Effectiveness of Investigation and Prosecution to Improve the Integrity of Law Enforcement in Indonesia." *Judge: Jurnal Hukum* 6, no. 01 (2025): 35-45.
- Santoso, Raihan Andhika, Elan Jaelani, and Utang Rosidin. "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Indonesia." *Depositi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 07-15.
- Setyawan, Vincentius. "Pancasila As A Philosophical Basis of Law Formation in Indonesia." *Nusantara: Journal of Law Studies* 2, no. 1 (2023): 1-8.
- Sitorus, Syahrul. "Upaya Hukum Dalam Perkara Perdata (Verzet, Banding, Kasasi, Peninjauan Kembali dan Derden Verzet)." *Hikmah* 15, no. 1 (2018): 63-71.
- Soroinda, Disriani Latifah, and A. A. R. S. Nasution. "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata." *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 384-405.
- Sukardi, Sukardi, and Hadi Rahmat Purnama. "Restorative Justice Principles in Law Enforcement And Democracy In Indonesia." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155-190.
- Suparto, Suparto, and Zulkifli Zulkifli. "Position of Circular Letter of the Supreme Court as a Follow up from the Decision of the Constitutional Court Number 37/PUU-IX/2011." *Awang Long Law Review Journal* 5 (2022): 225-234.

- Tongat, Tongat. "The ambiguous authority of living law application in new Indonesian penal code: between justice and the rule of law." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 188-209.
- Tornado, Anang Shopan. "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian case study." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 324-336.
- Widijowati, Dijan. "The Crime of Corruption Codified in Law Number 1 of 2023." *Journal of Law and Sustainable Development* 11, no. 11 (2023): e1859-e1859.
- Zia, Halida, Nirmala Sari, and Ade Vicky Erlita. "Pranata Sosial, Budaya Hukum Dalam Perspektif Sosiologi Hukum." *Datin Law Jurnal* 1, no. 2 (2020): 34-56.

Books:

- Mahmud Marzuki, Peter. *Penelitian hukum*. Jakarta: Kencana Prenada Media 55, 2005.
- Atmasasmita, Romli. *Integrative Legal Theory: Reconstruction of Development Legal Theory and Progressive Legal Theory*. Yogyakarta: Genta Publishing, 2012.
- Mertokusumo, Sudikno. *Hukum acara perdata Indonesia*. Yogyakarta: Liberty, 2009: 45.
- Soekanto, Soerjono. *Teori sosiologi tentang perubahan sosial*. Jakarta: Ghalia Indonesia, 1983.

Regulations

- Presidential Regulation No. 68/2005 on the Procedures for Preparing Draft Laws, Draft Government Regulations, and Draft Presidential Regulations.