

Paradoxical Formation of Legislation as a Manifestation of Law from the Perspective of Power and Justice

Rido Pradana

Faculty of Law, Universitas Negeri Semarang, Indonesia, E-Mail:
ridopradana@gmail.com

Abstract. *The formation of legislation is a manifestation of a state of law where the highest power lies in the law, not power as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the formation of legislation, the state of law is based on democracy which means the people hold a key role and a central position in determining the direction of policy, but in reality there are laws and regulations that are the result of the product of state power in the field of legislation that are not in accordance with the voice of the people. This research will discuss how the formation of legislation as a manifestation of law and the formation of legislation from the perspective of power and justice. By using a normative juridical research method, the author uses a statutory approach which is carried out by examining all laws and regulations that are interconnected with the legal issues discussed based on primary, secondary, and tertiary legal materials. The results of this study indicate a paradox in the formation of legislation as a manifestation of applicable law, from the perspective of power the formation of legislation is not carried out on the basis of the principles of the formation of good and correct legislation in order to create legal objectives and from the perspective of justice the legislation is not able to fulfill the aspirations of the community to become a real program that has a good impact on society. To avoid the paradox of the formation of legislation as a manifestation of law made by the state from the perspective of power and justice, it is necessary to apply the doctrine of meaningful participation optimally in the system of formation of legislation as a form of fulfillment of the principle of people's sovereignty.*

Keywords: *Formation; Justice; Legislation.*

1. Introduction

The establishment of legislation is a manifestation of the rule of law concept adopted by Indonesia. The concept of a rule of law state is a translation and originates from the tradition and history of continental European constitutionalism, pioneered by the French Revolution of 1789, which among other things, overthrew absolutism. The concept of the rule of law in Indonesia is

a neutralized concept of the rule of law, which according to the 1945 Constitution before the amendment, as explained in its explanation, states that Indonesia is a rule of law state (*rechtsstaat*). Then, Indonesia as a rule of law state was reaffirmed in Article 1 paragraph (3) of the 1945 Constitution after the amendment, which states "the state of Indonesia is a rule of law state." (Fadillah, 2022)

In applying the rule of law, a country has two tasks, namely:

- 1) Controlling and regulating the phenomena of asocial power, which are in conflict with each other, so that they do not become dangerous antagonisms;
- 2) Organizing and integrating the activities of individuals and groups toward achieving the goals of the entire society.

The state determines how the asocial activities of society are adjusted to one another and directed toward national goals. The concept of a rule of law state is inseparable from its own pillar, which is the doctrine of legal sovereignty. This doctrine is a teaching that states that the highest power lies in the law or that there is no other power whatsoever, except for the law alone. Based on the principle of the rule of law, which states that governance is conducted based on laws, the administration of a government must refer to the legislation that serves as the guideline for the administration of a state based on the will of the people. (Kirom & Nadirin, 2023)

Indonesia enacts laws as a form of legal certainty and also applies the principle of justice from their formation to their implementation. As stated in Article 28 D of the 1945 Constitution, which reads: "Everyone shall have the right to recognition, guaranty of protection, and fair legal certainty as well as equal treatment before the law." Therefore, in the process of forming legislation, it must be carried out by ensuring that everyone is entitled to recognition, guaranty of protection, and fair legal certainty.

In the formation of legislation, a state governed by law is based on democracy. Democratically means that the people hold a key role and central position in determining the direction of policies. One example can be seen in the practice of forming legislation, particularly Laws (UU) and Regional Regulations (Perda), which involve the People's Representative Council/Regional People's Representative Council (DPR/DPRD) that represent the voice of the people to provide input and direct the desires of the broader community.

The relationship between law and power can also be seen in the process of lawmaking and law enforcement. In the process of law formation, law is a mirror of power. If power arises from reasoning and a clean and ethical political process, then the law that emerges is a just and civilized law. Conversely, if power arises

from reasoning and an unethical political process, then the law that is created is a law that hinders the rulers and is far from being friendly to the society.

The law in question refers to positive law within legislation, which is part of the principles of justice. In this context, law is defined as a way to cultivate the sense of justice that exists in the conscience of Indonesian society internally. However, in reality, many regulations resulting from the state's legislative power invite controversy, including the revision of the Anti-Corruption Law (KPK), which has faced significant opposition from the public, anti-corruption activists, academics, and even the KPK itself. Then there is the rejection of the draft Criminal Code (Criminal Code), which is an original Indonesian legal product expected to address and resolve issues not accommodated in the Dutch colonial version of the Criminal Code. Then there is the Job Creation Law, which is considered to have harmed the labor force.

To realize legislation that embodies law as an external manifestation of justice from power, justice can be interpreted as the essence of the spirit that embodies law. This will achieve the supremacy of law, which is the supremacy of justice, and vice versa. Thus, legislation as a product of power does not contradict justice. Based on the background above, the issue in this research focuses on how the formation of legislation is understood as the embodiment of law in a legal state, which not only functions as a normative instrument but also as a means to realize order and legal certainty in societal life. Additionally, this research also examines how the process of legislative formation is viewed from the perspective of power, specifically to what extent the influence of political power and certain interests shape the resulting legal substance. On the other hand, the aspect of justice becomes an important focus in this research, namely how justice values can be accommodated at every stage of the legislative process, so that the resulting legal products are not only formally valid but also fair and acceptable to the wider community.

This research aims to analyze and understand the formation of legislation as the embodiment of law in Indonesia's rule of law, so that it can be determined to what extent the law functions as an instrument in creating order and legal certainty. Additionally, this research also aims to examine the formation of legislation from the perspective of power, particularly concerning the influence of political dynamics and interests in the legislative process. Furthermore, this research aims to review the formation of legislation from the perspective of justice, in order to determine to what extent justice values have been accommodated in each legal product produced, so that the law not only has formal legitimacy but also reflects the sense of justice that lives within society (Yumna & Taufik, 2023).

2. Research Methods

The research method used by the author in examining the issues in this study is normative juridical research. Normative research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. As a normative legal study, the approach used by the author in discussing this issue is the statute approach, which is carried out by examining all laws and regulations related to the legal issue being addressed. Furthermore, the legal materials used by the author in this normative juridical research are based on primary, secondary, and tertiary legal materials.

3. Result and Discussion

3.1. Formation of Laws and Regulations as a Manifestation of Law

According to Bagir Manan, laws and regulations are every written decision made, stipulated, and issued by institutions and/or state officials who have (exercise) legislative functions in accordance with applicable procedures. The formation of laws and regulations is the process of making laws and regulations which includes the stages of planning, drafting, discussion, ratification or enactment, and promulgation. A Law is a statutory regulation formed by the House of Representatives with the joint approval of the President. (Wiryadi & Martono, 2024)

Furthermore, according to Bagir Manan, the material content of laws can be determined based on general benchmarks as follows:

- 1) Stipulated in the Constitution;
- 2) Stipulated in previous Laws;
- 3) Stipulated in the context of revoking, adding, or replacing previous laws;
- 4) The material content concerns fundamental rights or human rights; and
- 5) The material content concerns the interests or obligations of the general public.

Laws and regulations are one of the legal products among the many existing legal products. Laws and regulations contain legal norms that are general and abstract. They are general because the legal norms apply to every legal subject in general. Meanwhile, they are considered abstract because the legal norms do not concretely regulate specific legal events that become the object of regulation.

The process of making laws as a manifestation of legal development is a series of events starting from planning, proposing, discussing, and ratifying. In a democratic legal formation system, the process has a bottom-up type, which requires that the material of the law to be formed reflects the values and will of the people. (Hanafi et al., 2024)

In forming laws and regulations, it certainly requires a concept in planning to create good laws and regulations. Good laws and regulations are those that have a foundation or basis known as *grundnorm*. For the Indonesian nation, *grundnorm* serves as the basis for forming laws and regulations. *Grundnorm* is a foundation to form laws that embody the value of justice. Pancasila is the *grundnorm* for the Indonesian nation.

A good law, which is one type of statutory regulation, must have philosophical, sociological, and juridical foundations. First, the philosophical foundation means that the essence of national development is an effort to achieve the ideals of the Indonesian nation as stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. The Preamble of the 1945 Constitution is a *staatsfundamentálnorm* which, according to Darji Darmodiharjo, is the philosophy of Indonesian law, while the Body and Explanation of the 1945 Constitution constitute its legal theory, because within its body are found the foundations of Indonesian positive law. This legal theory lays down the philosophical foundations of Indonesian positive law. The Explanation of the 1945 Constitution provides the background of thought and the inner atmosphere that emerged when the Constitution was formed. (Gusman, 2023)

Second, the sociological foundation means that law manifested in statutory regulations contains the ideals or aspirations of the nation to create and maintain security and order (*rust en orde*) in social life, and also functions as a means of social engineering (law as a tool of social engineering) towards the desired goals. Third, the juridical foundation relates to legal issues concerning the substance or material being regulated so that it becomes necessary to form new laws. Some of these legal issues include outdated regulations, regulations that are not harmonized or overlapping, regulations that are lower than laws so their binding power is weak, regulations that already exist but are inadequate, or regulations that do not yet exist at all.

In drafting good laws and regulations, according to Attamimi, they are divided into two classifications, namely formal principles and material principles. Formal principles include the principle of clear objectives (*beginsel van duidelijke doelstelling*), the principle of appropriate institutions (*beginsel van het juiste orgaan*), the principle of necessity (*het noodzakelijkheids beginsel*), the principle of implementability (*het beginsel van uitvoerbaarheid*), and the principle of consensus (*het beginsel van consensus*). Meanwhile, material principles include the principle of correct terminology and systematics (*het beginsel van duidelijke terminologie en duidelijke systematiek*), the principle of recognizability (*het beginsel van de kenbaarheid*), the principle of equality before the law (*het rechtsgelijkheidsbeginsel*), the principle of legal certainty (*het rechtszekerheidsbeginsel*), and the principle of law implementation according to individual circumstances (*het beginsel van de individuele rechtbedeling*).

Referring to Ruthers' opinion, laws and regulations can be considered as positive law because they contain three elements of positive law. First, law is the result of state action in recognizing and establishing the validity of certain norms. Second, law in the form of legislation does not question the necessity of justice. Third, it does not question the effectiveness, acceptance, or compliance of citizens with the law.

The formation of laws and regulations is a series of processes that include the stages of planning, drafting, discussion, ratification or enactment, and promulgation. These stages are stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as amended by Law Number 15 of 2019. Based on the provisions of Article 19 paragraph (2) of Law Number 12 of 2011, in forming the planning of laws and regulations, it is required to consider the background and objectives of the drafting, the targets to be achieved, and the scope and direction of regulation.

3.2. Formation of Laws and Regulations from the Perspective of Power

Max Weber in his book *Wirtschaft und Gesellschaft* (1992) states that "power is the ability, within a social relationship, to carry out one's own will even against resistance, and regardless of the basis of this ability." According to Talcott Parsons, power is a general capacity to ensure the implementation of binding obligations by units of a collective organization within a system, where these obligations are recognized with reference to the achievement of their collective goals, and in the event of non-compliance, certain negative sanctions may be imposed by whoever enforces them. (Widayati, 2020)

Power in relation to state affairs can be divided into two groups, namely state power and societal power. State power relates to the authority of the state to regulate social life in an orderly and peaceful manner. Societal power is the strength or ability of society to manage and organize the interests of individuals and groups within it so that social interaction can run smoothly.

Laws and regulations are general provisions intended for matters that are still abstract. The authority to make laws and regulations is attributed, delegated, or distributed based on the provisions of the Constitution (*grondwet*), as well as Laws in the formal sense. As long as the Constitution or Laws in the formal sense explicitly determine or grant such authority. Delegation in the making of a regulation means that a higher-level lawmaker grants authority to a lower-level lawmaker. The Constitution (*grondwet*) grants authority or delegation to Laws (*wet*). (Romadlon, 2016)

Law always requires the support of power in order to compel those who bear an obligation to fulfill it so that a right, which is its correlate, can be upheld. However,

the opposite does not apply; power does not require law to be realized. Thus, there appears to be a flawed logic in the relationship between law and power.

Power must serve human interests and not the other way around. People will indeed become weary if they live in a time where power is in the hands of individuals who are highly powerful but lack morality, in the sense that they do not possess ethical political will.

According to Satjipto Rahardjo, power in its pure form cannot accept limitations. This is why power must be humanized so that it becomes humane, meaning it must be placed within certain limits so that it only serves the law in upholding human dignity. In line with this, Magnis Suseno states that the purpose of law is to humanize the use of power. (Syofyan et al., 2023)

Power has significant importance for law because it is not only an instrument for law-making but also an instrument for law enforcement. Law also has an important role for power because it can function as a means of legitimizing the formal authority of state institutions, governmental units, state officials, and government authorities

3.3. Formation of Laws and Regulations from the Perspective of Justice

Plato divides justice into individual justice and state justice. Aristotle then distinguishes two kinds of justice, namely *justitia distributiva* (distributive justice, *verdelende* or *begevende* *gerechtigheid*) and *justitia commutativa* (remedial justice, *vergeldende* or *ruilgerechtigheid*). *Justitia distributiva* requires that each person receives what is their right or share, *sum cuique tribuere* (to each his own). This share is not the same for everyone, depending on wealth, birth, education, ability, and so on, which are proportional in nature. What is required here is not equality but balance. Meanwhile, *justitia commutativa* gives the same amount to everyone. Here, equality is required. What is fair is when everyone is treated equally regardless of position and so on. (Erwanto et al., 2024)

Meanwhile, Thomas Aquinas distinguishes justice into two groups, namely general justice (*justitia generalis*) or justice according to the will of the law that must be fulfilled for the public interest, and special justice which is based on equality or proportionality.

Justice is also related to popular sovereignty, which according to Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and is implemented according to the Constitution. In this article, the executor of sovereignty is the people themselves, so it can be said that law is formed by the people and for the people, therefore law must provide the benefit of justice for the people themselves.

According to the provisions of Article 5 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations, it is stated that the formation of laws and regulations must be carried out based on proper and correct principles of law-making in order to achieve the purpose of law in the form of justice. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations already contains formal procedures that must be followed in law-making. This is also in accordance with Article 22A of the 1945 Constitution which explains that the formation of laws and regulations has been specifically regulated, so that the objective of forming just laws and regulations can be achieved.(Wirayudha, 2025)

Justice is identical with law because it reflects the ideal form of law. Law, through laws and regulations, can regulate and create an equitable distribution of justice in society. Therefore, the role of law through laws and regulations is very important in creating justice. In order to achieve justice, there must be a serious commitment from all elements involved in the formation of laws and regulations to consider various interests within an integrated legal system framework and to make wise decisions.

According to Huijbers (1995), law must be understood as *ius*. Originating from the continental system, law is perceived as intertwined with principles of justice. Law is a just statute. This understanding is in line with traditional philosophical teachings, where the true meaning of law is closely related to justice. Law is *ius* or *recht*. If a concrete law, namely legislation, contradicts the principles of justice, then it is no longer normative and, in fact, can no longer be called law.(Puji Nugraha Simatupang, 2021)

According to Brian Tamanaha's understanding in the concept of legal realism theory, good law must be able to adapt to the development of society. Law in the form of laws and regulations must be able to accommodate societal aspirations into concrete programs that have a positive impact on society.

Furthermore, according to Solly Lubis, a regulation is considered perfect if it fulfills the following conditions:(Daniel Ehowu Zebua, Janpatar Simamora, 2022)

- 1) The regulation provides justice for those concerned, for example whether workers, farmers, fishermen, street vendors, women, teachers, and lecturers feel that their interests are truly protected by the presence of the regulation.
- 2) The regulation provides certainty, in the sense of legal certainty, that with its enactment there will be clear boundaries of rights (*recht, right*) and obligations (*plicht, duty*) of all parties involved in a legal relationship (*rechtsbetrekkingen*), for example in labor relations, marriage relations, work contracts, and so on.

3) The regulation provides clear benefits for those concerned. Generally, if the first two conditions are fulfilled, the third condition will also be fulfilled.

The formation of good laws and regulations must fulfill several concepts. The concept of forming laws and regulations must be in accordance with the concept of the Pancasila rule of law. This means that it must realize the principle of justice in the form of positive values contained in Pancasila into legal norms. The elaboration of this concept requires that Pancasila values such as truth and justice must be realized concretely into legal norms so that it will produce certainty, justice, and utility. Legal certainty stands in balance with justice because it has adopted the values of truth regarding justice contained in Pancasila. (Bermakna et al., 2023)

The legislation that serves as a guideline in the formation of laws and regulations currently, which can provide access to justice, is the provision in Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011, which states that:

The explanation of Article 6 paragraph (1) letter g states that: "What is meant by the 'principle of justice' is that every material content of laws and regulations must reflect justice proportionally for every citizen." (Sipayung et al., 2024)

However, in practice, laws and regulations as a manifestation of law often become tools to oppress and complicate people's lives. When this happens, the true identity of law changes. As a result, law becomes merely an instrument to achieve certain interests and is no longer able to uphold justice. When laws and regulations are formed solely for particular purposes, it is certain that they will not be able to provide a sense of justice for society.

4. Conclusion

Based on the problems and discussions that have been described and explained above, the conclusions can be drawn as follows: There are paradoxes in the formation of laws and regulations as a manifestation of applicable law. The formation of laws and regulations should be a realization of the rule of law, in which a state is based on law as reflected through laws and regulations that function to create and maintain security and order (*rust en orde*) in social life, as well as a means of social engineering (*law as a tool of social engineering*). From the perspective of power, the formation of laws and regulations is an exercise of state power in the legislative field. However, in reality, the formation of laws and regulations is not carried out based on proper and correct principles of law-making in order to achieve the purpose of law, namely justice. From the perspective of justice, the formation of the material content of laws and regulations must reflect

justice proportionally for every citizen. However, in reality, laws and regulations are not able to accommodate the aspirations of society into concrete programs that provide positive impacts on the community.

5. References

- Henny Andriani. (2023). Partisipasi Bermakna Sebagai Wujud Asas Keterbukaan Dalam Pembentukan Undang-Undang 306–318.
- Daniel Ehowu Zebua, Janpatar Simamora, H. S. (2022). Analisis Hukum Pembentukan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dalam Perspektif Pembentukan Peraturan Perundang-Undangan. *Nommensen Journal Of Constitutional And Administrative Law*, 01(01), 1–12.
- Erwanto, N. M., Gisna, E. S., Damero, C., Fillard, N. I., Hakim, B. A., & Hadji, K. (2024). Implementasi Asas Keadilan Dalam Penyusunan Peraturan Perundang- Undangan. *Jurnal Hukum, Politik Dan Ilmu Sosial*, 3(3), Hlm. 46-54.
<https://ejurnal.politeknikpratama.ac.id/index.php/jhpis/article/download/3883/3681/12106>
- Fadillah, N. (2022). Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja Dalam. *Jurnal Kajian Ilmu Hukum*, 51(1), 29–39. <https://ejournal.uin-suka.ac.id/syariah/supremasi/>
- Gusman, D. (2023). Model Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Sebagai Perwujudan Demokrasi Substantif. *Unes Law Review*, 5(3), 847–862. <https://doi.org/10.31933/Unesrev.V5i3.425>
- Hanafi, M. I., Damayanti, L. D., & Nazulfa, I. (2024). Penerapan Partisipasi Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan. *Constitution Journal*, 3(2), 193–210.
<https://doi.org/10.35719/Constitution.V3i2.113>
- Kirom, S., & Nadirin, A. (2023). Syahrul Kirom, Akhmad Nadirin Penerapan Keadilan Hukum Di Indonesia Dalam Perspektif Filsafat Hukum. *Mahkamah, Jurnal Kajian Hukum Islam*, 8(2), 177–185.
- Puji Nugraha Simatupang, D. (2021). Determinasi Keuangan Negara Guna Mewujudkan Keadilan Sosial (Social Equity) Bagi Seluruh Rakyat Indonesia. *Jurnal Hukum & Pembangunan*, 51(2), 12.
<https://doi.org/10.21143/jhp.vol51.no2.3061>
- Romadlon, S. G. (2016). Implikasi Pergeseran Sistem Politik Terhadap Hukum Dan Birokrasi Di Indonesia. *Jurnal Konstitusi*, 13(4), 868.
<https://doi.org/10.31078/jk1349>

- Sipayung, B., Hamongpranoto, S., & Arifudin, N. (2024). Aspek Teoritik Tentang Relevansi Kajian Hukum Perundang-Undangan Dalam Pembentukan Peraturan Perundang-Undangan. *Realism: Law Review*, 2(1), 1–20. <https://doi.org/10.71250/Rlr.V2i1.28>
- Syofyan, S., Delyarahmi, S., & Nadilla, I. (2023). *015cc2d35bb3c4197b8137c429901d1bd2df*. 6(2), 212–234.
- Widayati. (2020). Jurnal Hukum Yustisia. *Jurnal Hukum Unissula Jurnal*, 36(48), 59–72. <http://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/11391/4439>
- Wirayudha, M. D. (2025). Diskresi Penegak Hukum Dalam Sistem Peradilan Pidana: Harmonisasi Keadilan Prosedural Dan Substantif. *Harisa: Jurnal Hukum, Syariah, Dan Sosial*, 2(1), 170–185.
- Wiryadi, U., & Martono, E. D. (2024). Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Nasional. *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, 6(1), 1–10. <https://doi.org/10.37893/Krisnalaw.V6i1.790>
- Yumna, L., & Taufik, A. (2023). Sosiologi, Hukum, Sosiologi Hukum. *Jurnal Emanasi, Jurnal Ilmu Keislaman Dan Sosial, C*, 1–8.