

The Road to Changes in the Preparation of Law No. 15 of 2019 over Law No. 12 of 2011

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ABSTRACT

Keywords: Legislation, Law No. 15 of 2019, Public Participation, Transparency, Regulatory Quality. This article analyzes the changes that have occurred in drafting legislation in Indonesia through Law No. 15 of 2019 as an amendment to Law No. 12 of 2011. This research evaluates the impact of these changes on public participation, transparency, and regulatory quality. This research method uses the literature review method. The findings indicate increased public participation, stronger oversight, and improved regulatory quality. The implications of these changes in legal and social contexts are also discussed, along with recommendations for further refinement in drafting legislation in the future. In conclusion, a collaboration between the government, relevant institutions, and the community is very important in creating a legal environment that is inclusive and in favour of the interests of the community.



Introduction

Regulation or regulation is the legal foundation that regulates people's lives in a country. Excellent and effective regulation is necessary to maintain order, justice, and social welfare. Through regulation, the government regulates various aspects of life, including economic, political, social, and environmental (Hasan, Majidah, Yansah, Salsabila, & Wirantika, 2024).

Law No. 12 of 2011 is one of the essential regulations in Indonesia that regulates the establishment of laws and regulations (Yaniza, Ramadhanti, & Bimo, 2022). Although it has played a role in regulating the process of drafting laws and regulations, the need for adjustments and changes has arisen over time. Various societal developments, dynamics, and legal challenges demand adaptation and refinement to Law No. 12 of 2011 (Purba, Syamil, Nooraini, Sepriano, & Gunawan, 2023).

This study aims to analyze the process and substance of changes that occurred in the preparation of Law No. 15 of 2019 as an amendment to Law No. 12 of 2011. This research will use a descriptive-analytical method by collecting data from various sources, including official government documents, reports on discussions in the DPR, and related documents and literature analysis. This approach is expected to provide a more

comprehensive understanding of the changes that occur and their implications in the context of legislation in Indonesia.

Research Methods

Literature Study

A literature study was conducted to gather information and understanding of Law No. 12 of 2011, proposed changes, and relevant legal context. The steps in this literature study include:

1. **Source Identification:** Identification of relevant primary and secondary sources, including the text of Law No. 12 of 2011, Law No. 15 of 2019, relevant official government documents, academic publications, and journals that discuss related topics.
2. **Data Collection:** Collection of documents and literature related to changes in Law No. 12 of 2011 and the drafting process of Law No. 15 of 2019
3. **Document Analysis:** An in-depth analysis of the content of documents collected to identify substantial changes, the arguments proposed, and the political and social context that influenced the process of such changes.
4. **Synthesis and Interpretation:** Synthesis of information from multiple sources and interpretation of the main findings emerging from the study of this literature.

Comparative Analysis

The comparative analysis compared Law No. 12 of 2011 with Law No. 15 of 2019. The steps in this analysis include:

1. **Change Identification:** Identification of critical changes between the two laws, including substantial changes in provisions, procedures, and mechanisms in the drafting of laws and regulations.
2. **Impact Assessment:** An assessment of the impact of these changes on the statutory system, government, and society.
3. **Implication Analysis:** Analysis of the implications of these changes on the effectiveness and fairness in preparing laws and regulations and their application in society.

Interpretation and Conclusion

Interpretation of the findings in the literature study and comparative analysis will be used to conclude the study results. This conclusion will describe the implications of changes to Law No. 15 of 2019 in the context of legislation in Indonesia and provide recommendations for further improvement or potential changes in the future.

Results and Discussion

Common

The 1945 NRI Constitution article 1 paragraph (3) states Indonesia's commitment as a state of law. The regulation in Article 1, paragraph (3) of the 1945 Constitution is the result of the third amendment to the 1945 Constitution, where in the 1945 Constitution,

the original text of paragraph (3) in the article is not included. Initially, the notion that Indonesia is a state of law or *rechstaat* was stated in the explanation of the original text of the 1945 Constitution, which defined *rechstaat* as a state based on law. The founders of Indonesia did not have a transparent background when selecting the type of state of law for Indonesia (Mariana, 2021).

Indonesia's colonized experience is a strong reason for choosing the state of law type. This is because the type of State of Law is born from the rejection of absolute and arbitrarily exercised power.

As a state of law, the Republic of Indonesia has a purpose, as stated in the 4th paragraph of the preamble of the 1945 Constitution, which states: "to establish an Indonesian State Government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, lasting peace, and social justice" (Simamora, 2014).

Based on these objectives, especially the purpose "to promote the general welfare," it can be said that Article 1 paragraph (3) of the 1945 Constitution, which states that Indonesia is a state of law, is closely related to Indonesia as a welfare state. In addition, it also makes the understanding of Indonesia as a state based on law (*rechstaat*) not only stop at the understanding that everything must always be based on law because Indonesia is a country based on law (*rechtstaat*) in the sense of a management state (*verzorgingsstaat*). According to Hatta, the Republic of Indonesia's definition of *verzorgingsstaat* is a form of modern *rechtsstaat* where welfare is not based on individualism and only revolves around economic welfare. However, the welfare built is general welfare in the economic and spiritual fields. In particular, the state of law adopted by Indonesia is the State of Pancasila Law. (Indonesia, 1998).

Establishing the Republic of Indonesia as a state of law is inseparable from the history of the law that has developed worldwide, as Indonesia is more inclined to use the Continental European legal tradition. This was influenced by the development of the rule of law in the Netherlands, which colonized Indonesia for approximately 350 years. A prominent feature of the Continental European legal tradition was the priority of written law, so countries that adopted this system always tried to draft their laws in written form. In Indonesia, this can be seen from the sentence stated in the 4th paragraph of the preamble of the 1945 Constitution, which states that "... thus the Indonesian National Independence was drafted in a Constitution of the State of Indonesia..."

As mentioned earlier, the principle of the rule of law adopted in Indonesia is the Pancasila State of Law, which is a type of modern legal state, where in that country, the function of laws and regulations is not only to give shape to the deposits of values and norms that live in society, and also not just the function of the state in the field of regulation, but laws and regulations are one of the powerful methods and instruments available to regulate and direct people's lives towards the expected ideals. (Indrati, 1998)

In a modern state of law, laws and regulations are expected to be able to "walk ahead" to lead and guide the development and change of society. By what Koopmans

revealed, this condition makes the formation of laws and regulations no longer carried out by codification but becomes a modification. Laws and regulations made by modification are more focused on changes in people's lives (social modification) because they no longer collect values or norms that have long settled in society.

The Importance of Law Enforcement as Law Enforcement

Speaking of law enforcement, it is synonymous with law enforcement. Because law, in the narrow sense, is law. Law enforcement is an integral part of the law enforcement system in Indonesia (Hamid, 2016). Problems and obstacles that occur and are experienced in law enforcement, in general, are also experienced and faced in law enforcement in other fields, including law enforcement officials, ranging from police, prosecutors, judges, and advocates, which are widely highlighted and criticized as unprofessional when faced with violations of the law (Fong et al., 1971).

The law enforcement process is critical to note, considering that a goal of the Indonesian state is certainly not solely an idea that is only on paper and moves in the form of the 1945 Constitution or laws and regulations only because the law is made to be implemented (Wahyuningsih & Rismanto, 2016).

Law enforcement does not work in a vacuum and is impermeable to influence but always interacts with the social sphere. Therefore, in this case, the formation of laws, especially in this era of modern legal states, is a matter of the validity of a law, which is faced with the efficacy of the law. From the description above, it can be seen that the Laws and Regulations in the State of Pancasila Law play an essential role in changing society.

As a result of the formation of legislation by modification, this role is not easy to carry out. In realizing the purpose of the state, namely as a welfare state, good laws, and regulations are needed because how can law enforcement and welfare occur in the community if the law itself is not of high quality and does not let law enforcement cause unrest in the community?

The formation of laws by modification has the consequence that new norms and knowledge will emerge that are brought into society by law. The emergence of new norms is often not readily accepted by the public, and the government as the authority owner needs to be given limits so that the new norms are not arbitrary. They are considering the doctrines, principles, and factual conditions of whether the draft regulation is likely effective and can achieve its original purpose (Daraba, 2019).

The law and other laws and regulations are guarantees for the administration of the state based on law. By creating good laws that reflect the principles of forming good laws and regulations and can even support the principles of good governance, the ideals of the rule of law included in the 1945 Constitution will be realized. So, the globalization of the principles used in forming laws and regulations is essential today.

Law as a legal doctrine

In Indonesia, laws and regulations are part of the law. In the administration of the state, Indonesia is required to produce regulations that are not arbitrary and favour the people (Azikin, 2020). This is a logical consequence of what is stated in the 1945

Constitution, which states that Indonesia is a state of law. Indonesia promises to realize social welfare and justice for all its people. In addition, Indonesian laws and regulations are also bound by several modern legal doctrines. These doctrines form the theoretical basis for a state law like Indonesia, such as:

1. Laws / Regulations are recognized as laws that apply in national life; every legal norm must be explicitly stated in the formulas of articles/paragraphs written definitively in order to ensure certainty about what can and what cannot be and for the sake of objectivity in the framework of its primary function to protect the rights of citizens. That is the essential teaching in the management of national law, which is introduced by the term *rechtstaat* doctrine in Dutch. Meanwhile, the doctrine of the *rechtstaat* teaches that anyone under the state's life without exception must submit to and obey the rule of law. Officials may not act except based on the authority established according to laws and regulations.
2. The basis for the legitimacy of the enactment of national laws is the ideological belief that national laws have the highest standing. The doctrine is called the supreme state of law or the rule of law, so the position of state legal norms must be placed and considered higher than other norms.
3. The law of the land is the law of the "world" present in mortal life, and its existence must be separated from the "law of a threat," believed to be the eternal God's order. In order to organize worldly life progressively and continue to evolve from crisis to crisis, the present national laws are always considered to have the character of historicity. State/national law will always undergo reformative and continuous changes toward development that lead to the ideals of the country
4. National law must be treated and administered exclusively by experts, i.e., groups of educated professionals at a high level based on ethical attitudes. The fifth doctrine is that law in national life has an autonomous status. This means that law as a system and fighting institution must be strictly separated from political and religious affairs and various other affairs and studies. As outlined by Hans Kelsen.

Analysis of Change and Its Impact

Review of Major Amendments in Law No. 15 of 2019

Law No. 15 of 2019, an amendment to Law No. 12 of 2011, brings several significant changes in drafting laws and regulations in Indonesia (RI, 2019). Some of the critical identifiable changes include:

1. Complete Regulation on the Stages of Drafting: Law No. 15 of 2019 thoroughly regulates the stages in preparing laws and regulations, including the public consultation process, regulatory impact evaluation, and risk analysis.
2. Strengthening Supervision and Evaluation: There is an improvement in the supervision mechanism and evaluation of drafting laws and regulations. It aims to ensure that every regulation produced meets standards of sustainability, effectiveness, and fairness.
3. Empowering Supervisory Institutions: Law No. 15 of 2019 gives a more significant role to supervisory institutions, such as the Ombudsman and the Supervisory Agency

for Laws and Regulations, ensuring transparency, accountability, and compliance with established procedures.

Implications and Impact of These Changes on Various Aspects of Society and Government

Changes adopted through Law No. 15 of 2019 broadly impact society and government (Munawar, Marzuki, & Affan, 2021). Some of its critical implications include:

1. **Increased Public Participation:** With stricter regulations related to the public consultation process, the public has a more significant opportunity to participate in policy formation, thus strengthening the democratization aspect in preparing laws and regulations.
2. **Improved Regulatory Quality:** More comprehensive arrangements related to regulatory impact evaluation and risk analysis help ensure that any resulting regulations are more targeted, effective, and less burdensome to the community or affected parties.
3. **Strengthening Governance:** By strengthening the monitoring and evaluation mechanism, Law No. 15 of 2019 helps improve governance, reducing the risk of policies not in the public interest or contrary to the law.

Comparison between Law No. 12 of 2011 and Law No. 15 of 2019

The comparison between Law No. 12 of 2011 and Law No. 15 of 2019 illustrates the evolution of the approach and practice in preparing laws and regulations in Indonesia. Some of the key differences that can be highlighted between the two laws include:

1. **Level of Detail in Regulation:** Law No. 15 of 2019 features a higher level of detail in setting the stages of drafting legislation, while Law No. 12 of 2011 is more general.
2. **Strengthening Supervision and Evaluation:** Law No. 15 of 2019 affirms supervision and evaluation as an integral part of drafting laws and regulations, while this may be less regulated or emphasized in Law No. 12 of 2011.
3. **Role of Supervisory Institutions:** Law No. 15 of 2019 gives more substantial roles to supervisory agencies in overseeing the process of drafting laws and regulations, while their role may be more limited in Law No. 12 of 2011.

Thus, the changes mandated through Law No. 15 of 2019 reflect efforts to improve transparency, accountability, and quality of laws and regulations in Indonesia and strengthen public participation in the policy-making process.

Evaluation and Recommendations

Evaluation of the Effectiveness of Implemented Changes

After the implementation of Law No. 15 of 2019 as an amendment to Law No. 12 of 2011, evaluation of the effectiveness of the changes that have been implemented is essential. Some aspects that need to be evaluated are:

- 1) **Compliance with New Procedures:** Evaluate the extent to which the government and relevant institutions comply with the new procedures stipulated in Law No. 15 of 2019, such as public consultations and risk analysis.

- 2) Improving the Quality of Regulations: Evaluation of the quality of regulations produced after the changes are implemented and whether there is an increase in the relevance, clarity, and fairness of laws and regulations.
- 3) Community Participation: Evaluation of community participation in drafting laws and regulations after adopting Law No. 15 of 2019, including the level of involvement, diversity of opinions accommodated, and their impact on policy legitimacy.
- 4) Efficiency and Openness: Evaluation of the efficiency and openness of drafting laws and regulations, whether there is an improvement in transparency, accessibility of information, and public participation.

Recommendations for Further Improvement or Development to Applicable Regulations

Based on the results of the evaluation, several recommendations can be submitted for further improvement or development of applicable regulations:

- 1) Strengthening Supervision and Law Enforcement: Strengthening supervision and law enforcement mechanisms against violations of procedures in the preparation of laws and regulations, as well as increasing sanctions for violators.
- 2) Capacity Building and Awareness: Provide training and education to policymakers and the public on the importance of a transparent, participatory, and impact-oriented process of drafting laws and regulations.
- 3) Technical Improvement: Conduct a technical review of various provisions in Law No. 15 of 2019 to ensure clarity, consistency, and conformity with applicable legal principles.

Potential for Further Change in the Future

In addition, there is potential for further changes to continue to improve effectiveness and fairness in preparing laws and regulations in Indonesia. Some of these potential changes include:

- 1) Increased Community Engagement: Develop more inclusive and innovative mechanisms to increase public participation in policymaking, such as information technology and social media.
- 2) Institutional Reform: Further reform-related institutions in preparing laws and regulations, including capacity building, independence, and accountability.
- 3) Continuous Improvement: Encourages a cycle of continuous evaluation and refinement of existing regulations to accommodate evolving social, economic, and political changes.

By carefully evaluating and implementing appropriate recommendations, it is hoped that drafting laws and regulations in Indonesia will further strengthen the principles of democracy, justice, and sustainability.

Conclusion

Through amendments to Law No. 15 of 2019 and Law No. 12 of 2011, there have been significant changes in drafting laws and regulations, increasing public participation, and improving the quality of regulations. The implications are significant in strengthening

democratic principles, upholding justice, and improving the quality of people's lives. Although progress has been made, there are still challenges and room for improvement in regulatory effectiveness. Therefore, a collaboration between the government, relevant institutions, and the community is vital in creating a legal environment that is inclusive and in favour of the interests of the community.

Bibliography

- Azikin, Arkham. (2020). *Politik hukum komponen cadangan pada sistem Pertahanan Negara*. Universitas Hasanuddin.
- Daraba, Dahyar. (2019). *Reformasi birokrasi & pelayanan publik*. Penerbit Leisyah.
- Fong, D. G., Shapiro, A. M., Widgott, M., Ascoli, G., Eisenstein, B., Eisenstein, L., Hansen, J. D., Kruse, U., Sard, R., & Burnstein, R. A. (1971). *Test of Proportional Wire Chambers in Hybrid Systems*. Fermi National Accelerator Lab.(FNAL), Batavia, IL (United States).
- Hamid, Muhammad Amin. (2016). Penegakan Hukum Pidana Lingkungan Hidup Dalam Menanggulangi Kerugian Negara. *Legal Pluralism*, 6.
- Hasan, Zainudin, Majidah, Sanyyah, Yansah, Aldi, Salsabila, Rahmi Fitrinoviana, & Wirantika, Made Sera. (2024). Konstitusi Sebagai Dasar Hukum Dalam Pembangunan Sistem Hukum Nasional. *Jurnal Ilmiah Mahasiswa*, 2(1), 44–54.
- Mariana, Ibrahim. (2021). Peran DPR dalam Pengangkatan Duta Besar Setelah Amandemen UUD 1945. *Jurnal Tahqiqqa*, 15(1), 1–14. <https://doi.org/10.61393/tahqiqqa.v15i1.22>
- Munawar, Munawar, Marzuki, Marzuki, & Affan, Ibnu. (2021). Analisis Dalam Proses Pembentukan Undang-Undang Cipta Kerja Perpspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Jurnal Ilmiah METADATA*, 3(2), 452–468.
- Purba, Orinton, Syamil, Ahmad, Nooraini, Afni, Sepriano, Sepriano, & Gunawan, Arifin Faqih. (2023). *Dasar Hukum & Analisis Tata Kelola Ibu Kota Negara Dari Berbagai Bidang*. PT. Sonpedia Publishing Indonesia.
- RI, BADAN LEGISLASI D. P. R. (2019). *Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*.
- Simamora, Janpatar. (2014). Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Dinamika Hukum*, 14(3), 547–561.
- Wahyuningsih, Sri Endah, & Rismanto, Rismanto. (2016). Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia. *Jurnal Pembaharuan Hukum*, 2(1), 46–56.
- Yaniza, Tiza, Ramadhanti, Devi Cintiya, & Bimo, Mahesa Aryo. (2022). Landasan Hukum Penerbitan Green Sukuk Di Indonesia. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10(2), 415–423.