



The Urgency of Regulatory Reform in Order to Support Indonesia's National Development

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Abstract

Poor regulation quality contributes negatively to the regulation and law enforcement in the life of the state. The indicator of the poor quality of regulation includes, among others, the large number of regulations requested for judicial review and effectiveness of the implementation of regulations. There are several regulatory issues in Indonesia today, including the existence of multiple interpretations; potential conflict; overlap, principle mismatch, weak implementation effectiveness, not harmonious/out of sync; inconsistent; create unnecessary burdens, both on the target group and the affected groups. Base on these regulatory conditions, regulatory reform is very important and urgent. Given this very basic regulatory issue, it is necessary to make improvements in the regulatory field from upstream to downstream which leads to quality, orderly and simple regulations known as regulatory reform. The purpose of the study is to examine regulatory reform in order to support Indonesia's national development. research is done by doing literature research, or commonly known as the literature study. The Study shows that in order for a regulation to be good, it must fulfill several principles, namely: good norm, good process, and good drafting. Regulatory reform implementation is carried out through a) simplification of existing regulations; b) reconceptualization of the procedures for establishing regulations; c) institutional restructuring of regulation formation; and d) strengthening/empowering human resources with integrity. Good quality of democratic political dimension and progressive legal quality are needed to improve the quality of regulation

1. Introduction

Currently, the law in our country is in the spotlight and the center of public attention in our society. Not only does the behavior of law enforcement apparatus in the framework of the law enforcement is considered unfair to the public eye which may not fulfill the desire of justice seekers, but the regulatory quality issue¹ also contributes

¹ Regulation according to Big Indonesian Dictionary is the arrangement. In general, the function of regulation is to regulate a certain substance to solve existing problems in society. Therefore, regulation is a policy instrument (*beleids instrument*) or it can be said also that regulation is a form of norm of policy. So it can be understood if the regulations are in the form of Laws, Government Regulations, Presidential Regulations, up to the implementing regulations below them, and Perda.

negatively to the regulation and law enforcement in the life of the state both nationally and regionally. In the life of the state and the society, problems often arise caused by the poor quality of legislation.

The indicators used to demonstrate the quality problems of regulation in Indonesia through this paper is quite simple, namely: judicial review and the effectiveness of regulatory implementation. Although this indicator is not entirely correct, it can be used as an initial indicator to measure the quality of legislation. Based on the author's observation from year to year, there is an additional number of laws that are in judicial review (tested material) to the Constitutional Court. Likewise, legislation under the law filed a judicial review request to the Supreme Court.

Recapitulation Data of Tests on Laws at the Constitutional Court of the Republic of Indonesia from 2003 to December of 2017 appears that the number of laws tested to the Constitutional Court amounts to 560 with the following details: Approved: 243; Rejected: 373; Disapproved: 328; Repealed: 107; Abort: 20; Unauthorized: 7². Likewise, in the case of a judicial review (petition for judicial review of laws under the law against the law) received by the Supreme Court of the Republic of Indonesia is abundant.

As an illustration, the judicial review material received by the Supreme Court of the Republic of Indonesia during 2015 amounted to 72 cases and the remaining cases in 2014 are as many as 27 cases, overall the case examination fee amounted to 99 cases. The number of incoming cases was reduced by 13.25% compared to 2014 which amounted to 83 cases. The burden of the case fell 1.98% from the previous year which amounted to 101 cases. The classification of the regulations filed for the petition for judicial review in 2015 is as follows:³

The Supreme Court has adjudicated the judicial review of the 2015 (HUM) matter rights in 99 cases. The number of cases that have been cut has increased by 33.78% compared to 2014 which has been cut by 74 cases. The remaining cases of the HUM application in 2015 are 0 cases. The ratio for completion of a HUM case in 2015 is 100%. The 3 classification of the verdict on the case of HUM; Approved: 6 cases (6.06%), Rejected: 37 cases (37.37%) and Disapproved: 56 cases (56.57%).⁴

² <http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPUU&menu=5>

³ Mahkamah Agung Republik Indonesia. (2016), Laporan Tahunan 2015, Jakarta

⁴ Mahkamah Agung Republik Indonesia, Ibid p. 61.

Table 1: Classification of Regulations and Number of Material Test Requests to Indonesian Supreme Court in 2015

No.	Classification	Total	%
1	Government Regulation (<i>Peraturan Pemerintah</i>)	19	26,39
2	Ministerial Regulation (<i>Peraturan Menteri</i>)	13	18,06
3	KPU Regulation (<i>Peraturan KPU</i>)	12	16,67
4	Local Regulation (<i>Peraturan Daerah</i>)	10	13,89
5	President Regulation (<i>Peraturan Presiden</i>)	4	5,56
6	Ministrial Decree (<i>Keputusan Menteri</i>)	2	2,78
7	Governor Regulation (<i>Peraturan Gubernur</i>)	2	2,78
8	Governor Decree (<i>Keputusan Gubernur</i>)	1	1,39
9	Aceh Regional Regulation (<i>Qanun Aceh</i>)	1	1,39
10	Mayor Regulation (<i>Peraturan Walikota</i>)	1	1,39
11	Head of BPN Regulation (<i>Peraturan Kepala BPN</i>)	1	1,39
12	Minister's Circular Letter (<i>Surat Edaran Menteri</i>)	1	1,39
13	Joint Regulation of the Minister of Home Affairs of the Republic of Indonesia, Minister of Forestry RI, Minister of Public Works and Head of BPN RI	1	1,39
14	Election Supervisor Committee Decree (<i>Keputusan Panitia Pengawas Pemilu</i>)	1	1,39
15	Supreme Court Circular Letter (<i>Surat Edaran Mahkamah Agung</i>)	1	1,39
16	Deputy Head of Region (<i>Instruksi Wakil Kepala Daerah</i>)	1	1,39
17	BOD of PT. BRI Decree (<i>Surat Keputusan Direksi PT. BRI</i>)	1	1,39
Total		72	100,00

Source: The Annual report of Indonesian Supreme Court in 2015

Implicating to regulation implementation, various regulations have the potential to conflict or overlap between laws and regulations with other similar regulations affecting numerous complaints from the community, including economic actors. This can be observed in the regulation of natural resources that has caused a conflicting potential. For example, Law no. 4 of 2009 on Mineral and Coal Mining overlaps with Law no. 9 Year 1984 on Industry by both relating to Production Business License. Law no. 4 of 2009 links to the licensing system, regional authority, the division of affairs between the central and regional in Law no. 23 of 2014 on Regional Government. While Law no. 4 of 2009 overlaps with Law no. 32 of 2009 on Environmental Protection and Management and also with Law no. 18 of 2013 on the Prevention and Eradication of

Forest Degradation. The Regional Representatives Council (DPD) noted that at least 84 laws are currently in opposition.⁵

The preceding statement has not yet included issues relating to the regulation implementation of the above Laws, such as Government Regulations, Presidential Regulations, and Ministerial Regulations which has a higher amount than that of the Law. Not to mention correlated problems of certain regional regulations that are contrary to the higher laws and also the possibility of conflict between the regional regulations.

Similarly, there are regulatory problems in the regions, where many of the Local Regulation (Perda) that are problematic, both associated with the process of formation and substance. The biggest problem relating to regional authorities (Local Government and DPRD) regulates governmental affairs which are not supposed to be in authority or contrary to higher laws and regulations. This can be comprehended by the number of local regulations contrary to Law no. 28 of 2009 on Regional Taxes and Levies. Whether or not the quality of regulation can be influenced by several factors. The main factor is the ability of resource formation of local regulations that are still very limited or less in both quality and quantity. In addition, the planning factors for the formation of local regulations or Local Legislation Program (Prolegda) that have not been done optimally contributes to the quality of legislation.

Furthermore, by mapping the potentially problematic sectoral legislation undertaken by Bappenas, some of Indonesia's regulatory issues have been identified as;⁶ the existence of multiple interpretations, potential conflicts, overlapping authority, non-conformity of principle, weak effectiveness of implementation, unharmonious / out of sync, inconsistency, and causing unnecessary burdens to both the target groups and affected groups.

By focusing on these regulatory issues, improving the regulation becomes very critical and urgent. Nevertheless, we must admit that the regulatory arrangement is not an easy task. Regulatory improvement is not only about the amendment of the article alone, but requires a systemic approach both substantive, institutional, and legal awareness. In addition, it must also be supported by strong political will from the leaders of the state, especially the top level (high level) who should prioritize the interests of the country rather than the interests of the sector or region.

2. Research Method

This research is done by doing literature research, or commonly known as the literature study. The author also uses the juridical approach method, by studying the applicable legal provisions as well as what happens in reality in regulatory making process in Indonesia. This study uses statute approach. Then the next approach used concept approach (conceptual approach).

⁵ <http://ditjenpp.kemenkumham.go.id/berita-hukum-dan-perundang-undangan/1055-dpd-84-uu-bermasalah.html>

⁶ Direktorat Analisis Hukum dan Peraturan. (2012). "Memetakan hasil identifikasi undang-undang yang berpotensi bermasalah. Jakarta: BAPPENAS, p. 16

3. Result and Discussion

3.1. Regulatory Making Process in Indonesia (Current Condition)

As a modern country, The Constitution of the Republic of Indonesia Year 1945 declared itself as a democratic country and a state law which aims to build prosperity for its people.⁷

There are 2 (two) basic foundations that should be a pillar in the implementation of National Law Development, namely:⁸

- A. The foundation of *Idiil* which is the basic norm of life of nation and state, that is Law in which has the character of Pancasila.
- B. Operational Platform, namely:
 1. Law of justice and prosperity.
 2. Laws that strengthen democracy.
 3. Laws that protect human rights.
 4. Laws that reinforce the Unitary State of the Republic of Indonesia.
 5. The Unitary Diversity Law (*Bhinneka Tunggal Ika*).
 6. Laws that protect the nation and the blood of Indonesia.

These basic foundations should be the basis for the implementation of National Political Law. The political law will determine the overall direction of national development policy which will be implemented within a certain period. Legal politics is essentially the insight that becomes the basis of state intervention through state equipment (government, parliament, etc.) in law. State interference with its equipment to the law, in the case of:⁹

- **Law Creation:**
The state is obliged to maintain justice and order. To maintain justice and order, the state creates the Law.
- **Law Implementation:**
The State shall be obliged to provide state equipment in charge of enforcing the law in the manner specified by the state, including through the courts.
- **Law Development:**
Laws are based on the legal consciousness of the people. The state seeks to influence the development of public legal awareness, by which affects the development of law.

⁷ The Preamble of the 1945 Constitution of the Fourth Paragraph: Later than that to establish a Government of the State of Indonesia that protects the entire nation of Indonesia and the entire blood of Indonesia and to promote the general welfare, educate the life of the nation, and participate in implementing the world order based on independence, eternal peace and the Indonesian National Independence was formulated in the Indonesian State Constitution, which was formed in a composition of the Republic of Indonesia sovereign people based on the Supreme God, a just and civilized humanity, the Union of Indonesia and the People led by the wisdom of wisdom in the Consultative / Representative, and by realizing a Social Justice for all Indonesian people.

⁸ Badan Pembinaan Hukum Nasional, (2012). *Perencanaan Pengembangan Hukum Nasional 2015-2019*. Jakarta: Pusat Perencanaan Pengembangan Hukum Nasional, p.56

⁹ *Ibid* .P. 67.

In order to accomplish a prosperous society, the State or government intervention on various aspects of community life cannot be avoided. Government interference should be formulated in the form of law or legislation, both national and local legislation. Thus, in practice, the administration of the State cannot be separated from the so-called policy formulated in the legislation as a legal basis in implementing activities by the state.

The framing of regulation is a very complex process. The drafting of the legislation is not merely an activity in formulating norms into legal texts conducted by a group of people having authority for it, but its reach extends to the struggle and interaction of the surrounding socio-political forces.

In the dissertation of Hamid Attamimi, he cites the views of Burkhart Krems that the establishment of legislation involves two main points, namely the formation of content on one side and the activities concerning the fulfillment of the form of regulations, methods of formulating rules and processes, also the procedures for the formulation of regulations on the other side.¹⁰ Therefore, in the processes and procedures for the establishment of legislation, the laws of dogmatic state administration, political science, and planning plays an important role.¹¹ According to Satjipto Rahardjo, the core of the law establishment consists of two major groups; namely the sociological (socio-political) and juridical stages. In the sociological stage, there are processes to ripen an idea and/or problem which will then be brought into the juridical agenda. If the idea succeeds, it may be that the form and content are modified, that is, having it more enhanced or articulated than when it appears in the beforemath. The next stage continues into the juridical stage, they stage concerns the formulation of rule of law. This stage involves purely juridical intellectual activity which is undoubtedly handled by personnel who are specially educated in law.¹²

The arrangement of the formulation of legislation is regulated in various laws and regulations that specifically regulate the formation of laws directly and indirectly. Currently, the formulation of legislation is regulated in Law. Law No. 12 Year 2011 on the Regulatory Making Process, which states that the Establishment of Legislation is the drafting of legislation covering the stages of planning, drafting, discussion, approval or stipulation, and enactment. A detailed explanation of each stages are considered below:

1. Planning Stage

The stages of planning the drafting of the Act are done in Prolegnas. Prolegnas itself is regulated in Law no. 12 of 2011 Article 16-23 and Presidential Regulation no. 87 of 2014 on the Implementation of Law no. 12 Year 2011 on the Regulatory Making Process.

¹⁰ A.Hamid S. Attamimi, "The Role of Presidential Decree of the Republic of Indonesia in the Implementation of State Government: An Analysis Study Concerning Presidential Decisions Governing in Period of Pelita I - Pelita IV", Doctoral dissertation of the University of Indonesia, Jakarta 1990, pp. 318-319.

¹¹ Ibid p. 320.

¹² Rahardjo, S. (2003). *Sisi-sisi lain dari Hukum di Indonesia*. Jakarta: Penerbit Buku Kompas., h. 135.

As a planning instrument, Prolegnas contains a list of laws that reflect legal substance to be regulated, both national and mid-term national legislation programs. Therefore, Prolegnas should be the first step to actualize forward-looking legal products, which have ability to apply and usability.

At the planning stage, there are two important stages that must be fulfilled, namely the stages of research and stages of preparation of academic text. Referring to Article 1 number 11 of Law no. 12 Year 2011, states that the Academic Paper is a script of research or legal assessment and other research results on a specific problem that can be scientifically accountable regarding the arrangement of the problem in a Bill, the Draft of Provincial Regulation, or the Draft of Regency / City Regulation as a solution to the problems and legal needs of the community.

2. Compilation Stage

The drafting of legislation must be accompanied by Academic Papers (Article 43 - Article 51 of Law No. 12 Year 2011).

Exceptions to academic paper are for the Bill only where: a) State Revenue and Expenditure Budget; b) Determination of Government Regulation in Lieu of Law to become Law; or c) Revocation of the Law or the Revocation of Government Regulation in Lieu of Law.

3. Discussion Stage

Stages of Discussion of the Bill (Article 65 - Article 70 of Law No. 12 Year 2011).

The discussion of the Bill is done by the Parliament with the President or the assigned minister. That said, discussion of the Bill is done by involving the DPD¹³ when it comes to:

- a) Regional autonomy;
- b) Central and local relations;
- c) Establishment, division, and merging of regions;
- d) Management of natural resources and other economic resources and;
- e) Central and regional financial balance.

The Discussion of the Bill is done through 2 (two) levels of discussion, consisting of:

- 1) Level I, addresses in commission meetings, joint committee meetings, Legislative meetings, Budget Agency meetings, or Special Committee meetings. The Level I Discussion activities include: a. introduction to deliberation, b. discussion of the inventory list of problems, c. mini opinion submission.
- 2) Level II, addresses in plenary sessions. Plenary meeting is a decision-making session with activities includes the following:

¹³ Verdict MK No. 92 / PUU-X / 2012 stated that Article 22 paragraph (1) of Law no. The results of preparation of Prolegnas between DPR, DPD and Government as referred to in Article 21 paragraph (1) shall be agreed to become Prolegnas and stipulated in the plenary session of the People's Legislative Assembly "; Article 22 paragraph (1) does not have binding legal force as long as it is not understood, "the result of the preparation of Prolegnas between DPR, DPD and Government as referred to in Article 21 paragraph (1) is agreed to become Prolegnas and stipulated in the Plenary Session of DPR".

- a. the submission of a report containing the process, the mini-fraction opinion, the DPD's mini opinion, and the results of the first-level discussions;
- b. statement of consent or rejection of each faction and member orally requested by the chairman of the plenary meeting; and
- c. President's final opinion submission by the assigned minister.

If consent can not be reached by deliberation for consensus, then decision-making is done by the majority vote. Moreover, if the Bill does not get a joint approval between the House of Representation and the President, the Bill should not be submitted again in the House of Representation session at that time.

4. Legalization/ Enactment Stage

The Stages of Ratification of the Bill (Article 72 - Article 74 of Law No. 12 Year 2011), which has been approved jointly by the Parliament and the President shall be submitted by the House of Representative to the President to be ratified into Law within a period of no more than 7 (seven) days from the date of mutual consent.

The bill is authorized by the President by signature within 30 (thirty) days since the Bill is approved by the DPR and the President, but if the Bill is not signed by the President within 30 (thirty) days from the date the Bill is approved, the Bill shall be lawful and shall be promulgated.

5. Enactment Stage

In the Stages of Enactment (Article 81 - Article 84 of Law No. 12 Year 2011), it acts for public cognizance, the legislation should be enacted by arranging it in:

- a. State Gazette of the Republic of Indonesia;
- b. Supplement to the State Gazette of the Republic of Indonesia;
- c. Official Gazette of the Republic of Indonesia;
- d. Supplement to the Official Gazette of the Republic of Indonesia;

Legislation enacted in the State Gazette of the Republic of Indonesia, which includes:

- a. Law / Government Regulation in Lieu of Law;
- b. Government regulations;
- c. Presidential regulations; and
- d. Other laws and regulations that are in accordance with laws and regulations must be enacted in the State Gazette of the Republic of Indonesia.

Legislation enacted in the State Gazette of the Republic of Indonesia shall include laws and regulations in accordance with applicable laws and regulations shall be promulgated in the State Gazette of the Republic of Indonesia. Supplement to the State Gazette of the Republic of Indonesia shall contain the explanation of the laws and regulations contained in the State Gazette of the Republic of Indonesia. Supplement to the State Gazette of the Republic of Indonesia contains an explanation of the laws and regulations contained in the State Gazette of the Republic of Indonesia.

3.2. The Problematic Formulation of Regulation Quality

The regulatory quality can be viewed through two aspects; quality of regulatory material and the quality of the regulatory process. The quality of regulatory material

pertains to whether the articles in the regulation is already reflecting the aspirations of the people and can be an entry point for improving people's lives in all its aspects. While the quality of the regulation process is related to whether the process of formulating the law has fulfilled the argumentation base, policy choice, comprehensive, and open space of participation of existing community stakeholders. Thus, the process of formulating regulation is not simple. Several factors that influence the formation of regulations are the stages of planning, drafting, discussion, endorsement or stipulation and enactment.

Some of the factors that influence the formation of regulation include:

1. Regulatory planning

As a planning instrument, Prolegnas contains valuable lessons learned from the legislation process. So far, it notes that the weakness in the planning aspect can be one of the factors that contribute to the halting of legal substance development in our country. The evaluation of the implementation of National Legislation Program shows there are many weaknesses, among these problems are the list of laws that reflect legal substance to be regulated, both national and medium-term national legislation programs are not yet optimal in realizing forward-looking legal products, which have the power and effectiveness. Proposal of the Bill still exists that is influenced by sectoral ego interests and the idea that every issue must be resolved by formulating the law without conducting an in-depth assessment of the direction of its arrangement either from the Government or the House of Representative proposal.

Quality problems are often caused by an irrational quantity proposed by the proposer when compared to the strengths of the House and Government in discussing the Bill. This can be illustrated by the count of achievements and the realization of Prolegnas as follows:

From the 247 titles of the bill included in the 2010-2014 Medium Term Prolegnas list with an additional of 11 non-Prolegnas bills, up till January 24 2014 only 48 bills have been ratified into law. Details from 48 the bill below includes:

- 8 bills passed in 2010, with a total of 73 priorities;
- 19 bills passed in 2011, with a total of 91 priorities;
- 10 bills passed in 2012, of which the number of priorities is 69 bills; and
- 10 bills passed in 2013, with a total of 75 priority bill.
- 17 bills passed in 2014, with a total of 66 priorities.

The total number of laws passed into law from 2010-2014 is 64 bills. The amount does not include the Bill in the 2010-2014 Open Cumulative List of Prolegnas, which are 53 Bills related to: International Agreement, State Budget, the establishment of the autonomous region, the stipulation of Perpu into Law and due to the Constitutional Court's decision). Therefore, the total number of bills that can be passed by Parliament during Prolegnas Year 2010-2014 is as much as 117 bill (Draft of Prolegnas and Bill in Open Cumulative List).

The condition shows that the target of Prolegnas from year to year (Prolegnas Tahun 2010-2014) cannot perpetually be fulfilled. To improve such a condition, there needs to be an awareness and a shared commitment of the legislators. There is an inconsistency between the will and the ability to form the law. Therefore, it must be

realized and fully understood by the lawmakers to make changes and improvements so that the purpose of planning the formation of the Act (Prolegnas) to produce a qualified law can be achieved.

2. Institutional formation of regulations

Discussing the quality and quantity of legislation is inseparable from the activities of the institutions or stakeholders forming the regulation itself, particularly the activity of political institutions.¹⁴ Inevitably must also learn and dissect about the actor who has this specific role. Political studies in the legislation process help to understand the extent to which rationality becomes basic in making decisions between political options. This is in line with the thought of HAS Natabaya states that assessing the quality of legislation should be seen from upstream to downstream. The legislation is a political product that contains two meanings. The first meaning is politics in the sense of policy, the rules that bind the formation of legislation and the second is political in the sense of practical politics.¹⁵ Therefore, the legal product will be very determined by the balance or political configuration that gave birth to it. This thinking is based on the fact every law is a political decision therefore law can be seen as a crystallization of political thoughts that interact among politicians. According to Mahfud that the political configuration will bear the character of certain legal products as well. Then Mahfud shares the democratic political configuration with authoritarian political configuration. Mahfud said that democratic political configuration will lead to responsive and autonomous legal products while authoritarian political configuration will lead to the conservative/orthodox and oppressive legal character.¹⁶

3. Research Results and Academic Draft

Research and academic draft are the stages of investigating the problem and to look for solutions in the field of law and methods in making the rules more rational. The multi-approach aspect is a favorable principle to fulfill, the multi-approach is in accordance with the views of some experts who have mentioned above means to use many fields of science and also several ministries. In particular to provide policy alternatives and their implications for policymakers which in this case are the House of Representative and the Government.

The weaknesses of the research stages and the formation of academic draft have contributed to the problem of legislation over the years, both overlapping authorities, issues of legal uncertainty in regulation, and several other issues.

3.3. Regulatory Reform

Developing the quality of national and regional legislation products becomes very important to realize the purpose of the state as a welfare nation mandated in the constitution, for this reason, to produce quality legislation becomes a big responsibility. According to Gustav Radbruch, the potential for an imperfect law is caused by the antinomy between the three ideals of law, namely: justice, certainty, and expediency

¹⁴Marzuki, Laica. (2007). Mengembangkan Hukum Ideal. *Jurnal Legislasi Indonesia*, 4(2),

¹⁵ Natabaya, H. A. S. (2007). Peningkatan Kualitas Peraturan Perundangundangan (Suatu Pendekatan Input dan Output). *Jurnal Legislasi Indonesia*, 4(2), 176-179.

¹⁶ Moh, M. M. (2009). Politik Hukum di Indonesia. *Jakarta Utara: PT. Rajagrafindu Persada*, p. 4-6

that would be difficult to be concrete in a single legal formula. Not to mention the congenital defects of the law due to the formulation of the law occurred reducing the truth and full reality. In Satjipto Rahardjo's terms, this is due to formulating (and applying) the law no more as a language game as outlined earlier.¹⁷ Thus, T. Koopmans stated that the function of the formation of law (regulation) for now is increasingly felt important and necessary. This is because, in a state based on modern law (*verzorgingsstaat*), the main purpose of the legislation is not just to create codification for the norms and values of life that have settled in society, but a broader goal as to create modification in the people's lives.¹⁸

Considering the fundamental regulatory issues that have continued to this day, it is necessary to make improvements in the field of regulation from upstream to downstream (improvements from start to planning and to promulgation that includes the analysis of existing regulatory evaluations). Improving quality, an orderly, and simple regulation known as **Regulatory Reform**.

In order to implement the regulatory reforms, apart from maintaining the matters contained in the provisions of Law Number 12 Year 2011 concerning Regulatory Making Process consistently, Indonesia may also refer to the principles of good legislation, such as: in the OECD Principles on Good Regulation 1997¹⁹, OECD Guiding Principles for Qualitative Rules and Loyalty in 2005²⁰, and *UK Key Elements of effective and legitimate Regulatory Regime*²¹, which covers the following principles:

¹⁷ Widiarto, A. E. (2012). Mengukur Kualitas Legislasi Dalam Perspektif Legisprudence. (Konferensi Hukum Negara, Indonesia Corruption Watch, Public Review Guidance), p.7

¹⁸ Indrati Soeprapto, M. F. (1998). Ilmu Hukum, Jakarta: Kanisius, p. 2.

¹⁹ *Be needed to serve clearly identified policy goals (and effective in achieving those goals); have a sound legal basis; produce benefit that justify cost, considering the distribution of effects across society; minimize cost and market distortions; promote innovation through market incentives and goal-based approaches; be simple, clear and practical for users; be consistent with other regulations and policies; be compatible as far as possible with competition, trade and investments facilitating principles at domestic and international level.*

²⁰ *A clear legislative framework within which regulators can operate; regulator's office need to be structures and resourced in the best way suited to the achievement of their objectives; a transparent process where all parties with an interest have an opportunity to participate effectively; parliament must have an effective means of holding regulators to account; the procedure for challenge (i.e. appeal) should reflect the increased transparency of the regulator's procedure; regulation must be practicable and consistent; regulatory procedures should be timely and not over-burdensome..*

²¹ *Adopt at political level broad programs of Regulatory Reform that establish clear objectives and framework for implementation; asses impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment; ensure that regulation, regulatory institution charged with implementation, and regulatory process are transparent and non-discriminatory; review and strengthen where necessary the scope, effectiveness and enforcement of competition policy; design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except clear evidence demonstrates that they are the best way to serve broad public interest; eliminate unnecessary barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness through the regulatory process, thus strengthening economic efficiency and competitiveness; identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support system.*

- Good Norm, which meets the criteria of Necessity, Adequacy, Legal certainty, Clearly, Actuality, Feasibility, Verifiability, Enforceability, Provability²²;
- Good Process;
- Arranged in a structured format which follows the standards specified in the Good Drafting rules.

In addition, we also need to conduct comparative studies with other countries. In the last few decades, OECD countries have undertaken regulatory reform under various fields in order to improve the lives of their people. Although the results are not all successful due to specific problems in their respective countries, there is already broad consensus that regulatory reform is needed to alleviate the problems of deterioration by different levels of depth, scope, and time in each country. Adapting from the regulatory reform experiences of countries that have succeeded in improving their living standards or economy by simplifying the regulations in the economic field are; South Korea, Mexico, Moldova, and Ukraine. The following illustrates the impact of regulatory reform on the economic level of each below:²³

Table 2. The impact of regulatory reform on the economic level from several countries

Country	Time Required	Regulation Reformed	Total Before Regulatory Reformed (Simplification)	Revoked Policies (%)	Simplified Regulation
South Korea	11 Months	<i>Regulations</i>	11.125	48,8	21,7
Mexico	5 Years	<i>Formalities</i>	2.038	54,1	51,2
Moldova	16 Weeks	- <i>Regulation</i> - <i>Fee Based</i> <i>Permits</i>	- 1.130 - 400	- 44,5 - 68	- 12,5 - 20,3
Ukraine	12 Weeks	<i>Regulations</i>	15.000	46,7	43,3

Source: data is processed by the author

Learning from these countries, the effectiveness of national regulatory reform was determined by the political will of the national leader. That is why regulatory reform should be encouraged to become a program for a national leader who will be selected in July next year. Considering the year 2014 as a crucial year because it was a year ends of medium-term development plan phase II (2010-2014) as well as the year ends of the medium term of national legislation program 2010-2014, it is ideal to held Regulatory Reform on 2014. End of 2014 is an initial stage of mid-term plan 2015-2019.

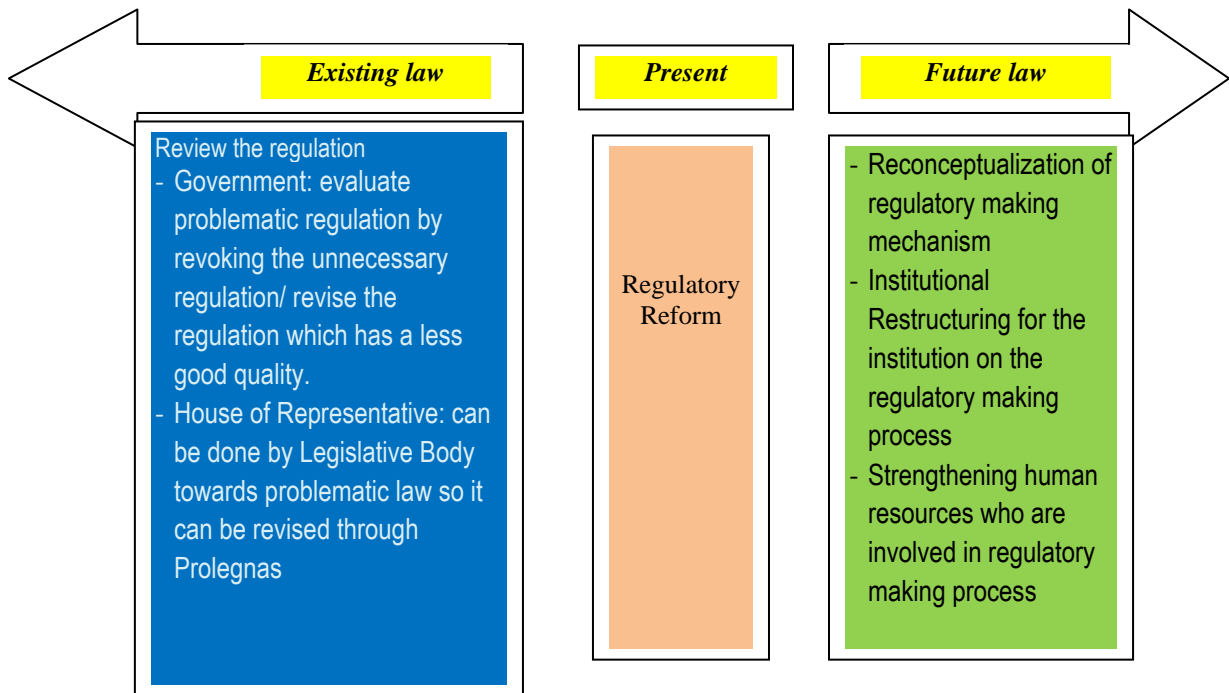
Regulatory reform must be done synergistically towards existing regulation and the regulation which are planned to exist in the future. It is also need to be supported by the institution and also the human resources who involved in the regulatory making process. Regulatory simplification which is intended to overcome the problem of

²² Asep Warlan Yusuf. (2012, July 16-18). delivered on technical guidance on preparing of academic paper

²³ www.oecd.org/regreform/reform, www.oecd.org/regreform/countries/maldives, www.oecd.org/countries/ukraine, www.oecd.org/countries/democraticpeoplesrepublicofkorea, www.oecd.org/regreform/countries/mexico

disharmony and the quantity of regulation is needed to be applied towards the existing regulation. However, on the planning of future regulation, it is necessary to establish a standard mechanism to overcome the quality problem and hopefully it can reduce the quantity problem.

The scheme of regulatory reform can be described as follows²⁴:



a. Regulatory Simplification of existing law.

In order to create an effective and efficient legal condition, the mission of regulatory reform is to create a simple and orderly regulation. This mission should be implemented synergistically and simultaneously both to existing law and to the regulation which will be formed. Regulatory Simplification is applied to the existing regulation.

Regulatory Simplification is one of the efforts to improve the condition of written law in Indonesia which is empirically seen and felt to be overlap or disharmony. This condition should be fixed so that the negative excesses will not getting any farther and resulting in legal uncertainty in its enforcement. This effort should be done by reviewing or reassess the existing regulation and then simplify it by revoking the unnecessary regulation, revise and improve necessary but problematic regulations and to maintain the existing regulation which is still needed and have a good quality.

The method of simplification done by measuring the relevance of some regulation with some basic criteria. The criteria are related to the aspects of legality, aspects of needs and aspects of friendly procedures. The aspect of legality is intended to

²⁴ Diani Sadiawati. (2013, May 21). delivered on Public Consultation on Regulatory Reform.

observe whether or not some regulation has multiple interpretations or have a potential conflict, duplication, inconsistent or even not operational. Aspect of needs is intended to observe whether or not some regulation have a clear goals which are based on the fundamental needs of the society or state apparatus. While the aspect of friendly procedure intended to observe whether or not some regulation is easily understood and obeyed and are not give an excessive burden to the affected group. On the other words, the purpose of regulation can be achieved without giving an unnecessary burden to the group who directly affected by certain regulation.

b. Reconceptualization of procedures on regulatory making process

Reconceptualization of procedures on the regulatory making process is important to address regulatory quality issues. The regulatory making process is no longer based on sectoral regulatory approach or influenced by sectoral ego (or regional egos) and the idea that every problem must be resolved by formulating new regulations which lead to an overlap or over-regulated condition.

The ongoing effort is the reconceptualization of the drafting procedure by setting the presidential regulations to implement Law number 12 year 2011 on regulatory making process. The concept of this process held through a mechanism which emphasizes on the strengthening the underlying background in order to make certain regulation. On planning a medium-term of national legislation a good research and assessment should be made therefore the list of draft regulation is the result of analysis and assessment of the real need for a regulation and not just a mere wish list.

Reconceptualization of procedures on regulatory making process done in Prolegnas to be more qualified, informative and have a clearer vision in supporting national development planning. The government has formulated a new concept of Prolegnas Mechanism. This new concept stated in the Presidential Regulation Number 87 year 2014 on the Implementation of Law Number 12 year 2011. Some concept on the Presidential Regulation Number 87 year 2014 are as follows :

1. A Provisions governing that the list of medium-term Prolegnas will be further directed to an integral need with national development plan (RPJMN) which are based on the research and/ or assessment that recommends the need to make a regulation.
2. A provision governing that the initial draft of medium-term Prolegnas prepared by 6 Minister ie Minister of Law and Human Right, Minister of National Development Planning/ Head of Bappenas, Minister of State Secretariat, Minister of Finance and Minister of Home Affairs.

The concept of medium-term Prolegnas as the result of coordination of 5 Ministers will be delivered to Ministry/ Institution in accordance with their respective duties and functions. This concept to minimize negative excesses from sectoral ego on proposing a Bill in Prolegnas from each ministry.

This new mechanism is expected to solve the quality problems on Prolegnas. However, this effort should be accompanied by the same understanding by the House of Representative who actually has a main legislative function.

c. Institutional Restructuring on Regulatory Making Process

The formulation of legislation is inseparable from the role of the institution. Existing institution is not yet optimal in supporting the regulatory making process because it worked sectorally. Therefore there is a need to have a specific institution that has the task to centrally plan and make the legislation in order to make one whole comprehensive system on the formulation of legislation. We realize that institutional restructuring is not an easy task because it associated with institutional authority and the imposition of state finances.

d. Empowerment of human resources with integrity

The quality of regulation will be largely determined by the quality of human resources who formed the regulation so that we need to pay attention to improve the quality of the human resources. In Indonesian constitutional system, the main actors who forming the law are in the House of Representative who has a legislative function. However this is not the only role of the legislator, they have another role besides the formation of the bill. In article 98 Law Number 12 year 2011 on Regulatory Making Process mandated that every stage of the formulation of legislation should involve the legislative drafter, researchers, and experts and must hold a public participation.

Legislative drafters are the spearhead or architect of the development of national law especially in drafting legislation on the central or local level. The competence of the drafter can be seen from its ability to formulating a social problem into a clear legal norm or legislation so it can be easily understood and implemented in society. Besides that, the need for the number of legal drafters is also a concern regarding the fact that there will be much regulation that need to be formed at central and local level.

The competence and quantity of researcher also determine the achievement of the result of law research and assessment that is needed especially on the making of academic paper of a Law. In the process of drafting a Bill, an Academic paper is a portrait of many problems that want to be resolved through the legislation. In the consideration of a Law, there is always a philosophical, sociological and juridical consideration which emphasizes on how these aspects are important it describes the constellation of facts and how existing facts can be solved. All the problems must be collaborative without any priority to the individual groups or interests and it must be accountable.

Another important aspect in the process of policy formulation is public participation. There are a stronger public demands for broader participation which due to the increasing public awareness of their needs and interests on the issues concerning the life of society and stare.

4. Conclusion

It is important to improve the quality of national and local legislation product in order to achieve the goal as a welfare state as stated in our Constitution. How we form our regulation become a very big responsibility.

A good quality of democratic political dimension and progressive legal quality are needed to improve the quality of regulation. These two dimensions are as the effort to bring legislation closer to society. It is not an easy task because society is dynamic but the effort on regulatory reform should always keep moving.

Improving the quality of planning on regulation (Prolegnas), research and assessment result, academic paper, and of quality and quantity of human resources who formed regulation become a crucial part that must be done immediately. An objective and realistic public participation also take a very important role to achieve a condition where regulation does not become a burden on society.

Bibliography

Books

- Moh, M. M. (2009). Politik Hukum di Indonesia. *Jakarta Utara: PT. Rajagrafindu Persada.*
Rahardjo, S. (2003). *Sisi-sisi lain dari Hukum di Indonesia.* Jakarta: Penerbit Buku Kompas.
Indrati Soeprapto, M. F, (1998). Ilmu Hukum, Jakarta: Kanisius

Journals

- Asep Warlan Yusuf. (2012, July 16-18). delivered on technical guidance on preparing of academic paper
Diani Sadiawati. (2013, May 21). delivered on Public Consultation on Regulatory Reform Web
Natabaya, H. A. S. (2007). Peningkatan Kualitas Peraturan Perundangundangan (Suatu Pendekatan Input dan Output). *Jurnal Legislasi Indonesia, 4(2), 176-179.*
Marzuki, Laica. (2007). Mengembangkan Hukum Ideal. *Jurnal Legislasi Indonesia, 4(2),*
Widiarto, A. E. (2012). Mengukur Kualitas Legislasi Dalam Perspektif Legisprudence. (Konferensi Hukum Negara, Indonesia Corruption Watch, Public Review Guidance)

Thesis/Dessertation

- Attamimi, A. H. S. (1990). Peranan keputusan presiden Republik Indonesia dalam penyelenggaraan pemerintahan negara: suatu studi analisis mengenai keputusan presiden yang berfungsi pengaturan dalam kurun waktu Pelita I-Pelita IV.

Website

- Mahkamah Agung Republik Indonesia. (2011). Ringkasan Eksekutif Laporan Tahunan Mahkamah Agung Indonesia. Retrieved from <https://www.mahkamahagung.go.id/images/LTMARI-2011.pdf>
Mahkamah Agung Republik Indonesia. Recapitulation Data of Tests on Laws at the Constitutional Court of the Republic of Indonesia from 2003 to December of 2017. Retrieved from

<http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPUU&menu=5>

Government Document

Badan Pembinaan Hukum Nasional, (2012). Perencanaan Pengembangan Hukum Nasional 2015-2019. Jakarta: Pusat Perencanaan Pengembangan Hukum Nasional,

Direktorat Analisis Hukum dan Peraturan. (2012). "Memetakan hasil identifikasi undang-undang yang berpotensi bermasalah. Jakarta: BAPPENAS

Mahkamah Agung Republik Indonesia. (2016), Laporan Tahunan 2015, Jakarta

Legal document

Putusan Mahkamah Konstitusi No. 92/PUU-X/2012