

RESEARCH ARTICLE

Effective and Efficient Synchronization in Harmonization of Regulations Indonesia

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ABSTRACT

Synchronization and Harmonization of Legislation in Indonesia are carried out by the National Legal Development Agency and the Directorate General of Legislation. The National Legal Development Agency will synchronize and harmonize laws and regulations at the planning stage and drafting the concept of laws and regulations. Meanwhile, the Directorate General of Legislation carries out synchronization and harmonization efforts at the stage of forming the draft legislation. The absence of a definite mechanism regarding the stages of synchronization and harmonization, as well as the separation of the process into two institutions, resulted in the efforts of synchronization and harmonization being not optimal because efforts of synchronization and harmonization are stages that must be carried out in a systemic and integrated manner. This impacts the quality of the laws and regulations produced, which is the goal of synchronization and harmonization.

Keywords: Synchronization; Harmonization; Legislation.

INTRODUCTION

Legislation instruments as written legal instruments have a significant role in Indonesia, a state of law that idealizes the principle of the rule of law. Legislation is also often identified with the law in the civil law legal system, including in Indonesia.¹ Legal positivism is still a role model, although basically, legislation is only one part of the sub-system of legal substance or legal substance. Lawrence M. Friedmann, in his book, suggests that in addition to legal substance, two

¹Novianto M. Hantoro *et. al.*, *Sinkronisasi dan Harmonisasi Hukum Penyelenggaraan Otonomi Daerah: Studi di Provinsi Bali*, (Jakarta: P3DI Setjen DPR Republik Indonesia dan Azza Grafika), p. 3.

other elements are elements of a legal system, namely legal structure, and legal culture.² Legislation is broadly divided into laws and regulations at the central level and legislation at the regional level. It is possible that there will be differences in interpretation or interpretation between laws and regulations at the center and in the regions or between basic laws and regulations and implementing regulations, resulting in synchronization and disharmony between laws and regulations in their implementation. This insynchronization and disharmony of laws and regulations is caused by 6 factors, namely:³

1. Formation is carried out by different institutions and often at different times;
2. Officials authorized to form laws and regulations change, either because the term of office limits them, transfer of duties, or replacement;
3. The sectoral approach in the formation of laws and regulations is stronger than the systems approach;
4. Weak coordination in the process of forming laws and regulations involving various agencies and legal disciplines;
5. Public access to participate in the process of forming laws and regulations is still limited;
6. There are no definite, standard, and standard methods and methods that bind all institutions authorized to make laws and regulations.

As a result of the synchrony and disharmony of these laws and regulations, there are not only differences in interpretation in their implementation. However, it can also result in legal uncertainty, ineffective and inefficient implementation of laws and regulations, and legal dysfunction, namely where the law does not function to provide behavioral guidelines to the community, social control, dispute resolution, and provide means of social change in an orderly and orderly manner.⁴ Therefore, the arrangement of the form, arrangement, naming, procedure for preparation, determination, promulgation, revocation, or cancellation, and the management of information and its documentation must be regulated orderly and systematically.⁵ In other words, there is a need for hierarchical guidelines to ensure their relationship with the principle of a strict separation of powers so that there is no legal vacuum, overlapping laws, and regulations, or legislation whose material does not match the content material according to its type. Confirmation of the suitability of the type of legislation with the content material also needs to be re-positioned concerning the grouping of regulations and their nature. Is it binding out for all citizens (*erga omnes*) or binding into a specific scope only?

Initially, Indonesia had a National Legal Development Institute, which served as a particular agency to carry out national law development, to systematically review the colonial period legislation to realize a national legal system through the preparation of laws and regulations, then to harmonize them with the state's circumstances and interests. , proposals for the laws and

²Lawrence M. Friedmann, *The Legal System: A Social Perspective*, (New York: Russel Soge Foundation, 1969), p. 16.

³A. A. Oka Mahendra, "Harmonisasi Peraturan Perundang-undangan", Direktorat Jenderal Peraturan Perundang-undangan, *Makalah Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia Tahun 2012*,

⁴*Ibid.*

⁵Jimly Asshiddiqie, *Format Kelembagaan Negara*, p. 25.

regulations of the Dutch East Indies era that need to be changed or repealed, as well as the translation and standardization of legal terms.⁶ In other words, the National Legal Development Institute was formed as a planner and designer of laws and regulations in the context of realizing a national legal system. Efforts to synchronize and harmonize laws and regulations have been attached to this institution. This National Law Development Institute later changed to the National Law Development Agency⁷ and focused on the task of legal planning and the preparation of the National Legislation Program (*Prolegnas*).

In addition to the existence of the National Legal Development Agency, as the embodiment and refinement of the work unit at the Ministry of Law and Human Rights, a Directorate General of Legislation has been formed, which has several times changed its history of shade. At first, the Directorate General of Legislation was part of the Directorate of Law and Legislation under the Directorate of Legislation. It was withdrawn to be part of the National Legal Development Agency as a Design Center and returned to the Ministry of Law and Human Rights until now established as a Directorate General of Legislation work unit.⁸

With these two institutions, namely the National Legal Development Agency and the Directorate General of Legislation, they should be able to work optimally to assist the government in producing quality laws and regulations that can meet the needs of national law. One way to ensure that the resulting laws and regulations are of good quality is to synchronize and harmonize them in the drafting process. Efforts to synchronize and harmonize laws and regulations are the most important and inseparable part of drafting laws and regulations. Good synchronization and harmonization efforts in the preparation of laws and regulations will undoubtedly impact the quality of the laws and regulations that are formed, especially in deepening the material and formulation of the resulting legislation. Therefore, this effort must be carried out systemically from an early age, namely from the preparation of academic texts, the preparation of the National Legislation Program (*Prolegnas*), and draft laws and regulations⁹.

In drafting laws and regulations, the National Legal Development Agency and the Directorate General of Legislation significantly role¹⁰. These two institutions are the organizational structure of the Ministry of Law and Human Rights regulated by Presidential Regulation of the Republic of Indonesia Number 44 of 2015 concerning the Ministry of Law and Human Rights. With the function of each institution that has been determined in Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights, these two institutions will coordinate the preparation of laws and regulations. If planning and evaluating legislation is in the National

⁶Badan Pembinaan Hukum Nasional, "Sejarah Berdirinya Badan Pembinaan Hukum Nasional", *bphn.go.id*

⁷Perubahan Lembaga Pembinaan Hukum Nasional menjadi Badan Pembinaan Hukum Nasional dilakukan pada tahun 1974 dengan dikeluarkannya Keputusan Presiden Nomor 45 Tahun 1974.

⁸Direktorat Jenderal Peraturan Perundang-undangan, "Struktur Organisasi Direktorat Jenderal Peraturan Perundang-undangan", *ditjenpp.kemenkumham.go.id*, diakses pada hari Kamis tanggal 2 Juni 2016.

⁹Ahmad M. Ramli, *Makalah Semiloka Keselamatan dan Kesehatan Kerja Nasional*, "Koordinasi dan Harmonisasi Peraturan Peundang-undangan", Jakarta, 11-13 Maret 2008, p.1-2.

¹⁰See Article 4 Peraturan Presiden Nomor 44 Tahun 2015 tentang Kementerian Hukum dan Hak Asasi Manusia, (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 84).

Legal Development Agency, then the function of drafting laws and regulations is in the Directorate General of Legislation.

In terms of legal planning, the National Legal Development Agency is assisted by the National Legal Planning Center, which will coordinate the preparation of national legislation programs within the government and programs for drafting government regulations and presidential regulations.¹¹ The Center for Analysis and Evaluation of the National Law will prepare academic texts and harmonize academic texts from the laws and regulations that will be drafted.¹² These laws and regulations include laws, government regulations instead of laws, government regulations, and presidential regulations. This means that in planning the preparation of laws and regulations and conducting studies on the preparation of academic texts, it is necessary to synchronize and harmonize the laws and regulations that will be formed. Do not let the planning for the preparation of laws and regulations collide with the rules that have been applied to the existing laws and regulations. Meanwhile, the evaluation is also carried out by the National Legal Analysis and Evaluation Center by conducting analysis and evaluation of all legal issues and providing feedback and assistance to agencies or stakeholders, including issues of legislation in the context of strengthening the conception of national legal development.¹³ In this section, the National Legal Development Agency will examine national legal issues in various fields to become the material for future national legal planning. Then, in the design section, which is a function of the Directorate General of Legislation, efforts to synchronize and harmonize laws and regulations will be seen in the functions carried out by the Directorate of Legislative Design, the Directorate of Harmonization of Legislation I, and the Directorate of Harmonization of Regulations. Legislation II.

It becomes interesting when drafting laws and regulations involve two different institutions but carrying out functions related to each other and cannot be separated, namely planning for the preparation of legislation, preparing academic texts, drafting legislation, and evaluating the laws and regulations that have been established. Each institution will not be able to carry out its functions partially, and apart from other institutions, good coordination between the two institutions will determine the quality of the legislation produced later. This is where the importance of synchronization and harmonization efforts is in the preparation of legislation. However, it is not clear when the synchronization and harmonization process should be carried out at the stage of forming laws and regulations. The process of synchronization and harmonization is essential to be carried out in the context of deepening the material for the formation of laws and regulations, considering the main problems in-laws and regulations are: a)

¹¹See Article 1052 huruf b Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 29 Tahun 2015 tentang Organisasi dan Tata Kerja Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, (Berita Negara Republik Indonesia Nomor 1473 Tahun 2015).

¹²See Article 102 huruf e dan f Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 29 Tahun 2015 tentang Organisasi dan Tata Kerja Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, (Berita Negara Republik Indonesia Nomor 1473 Tahun 2015).

¹³See Article 32 Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 29 Tahun 2015 tentang Organisasi dan Tata Kerja Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, (Berita Negara Republik Indonesia Nomor 1473 Tahun 2015).

overlapping and inconsistency of laws and regulations; b) the formulation of laws and regulations that are not clear; and c) its implementing regulations hamper the implementation of the law. In essence, synchronization and harmonization are like interconnected and systematic cycles. When one part of the cycle breaks down, the other part breaks too.

Based on the explanation that has been described, it is interesting to study and analyze further the role of the National Legal Development Agency and the Directorate General of Legislation in efforts to synchronize and harmonize laws and regulations because synchronization and harmonization should be a priority in the planning and drafting of legislation in order to produce quality laws and regulations that can meet the needs of national law. Based on the background described, this paper will study and analyze the synchronization and harmonization of effective and efficient laws and regulations in Indonesia.

DISCUSSION

The Role of the National Legal Development Agency

Legislation is a written regulation that contains legally binding norms in general and is established or determined by state institutions or authorized officials through procedures established by state institutions or authorized officials through procedures stipulated in laws and regulations.¹⁴ Furthermore, it refers to the theory of grading norms, known as *stufentheorie* put forward by Hans Kelsen, where a legal norm is always sourced and based on the norms above it¹⁵ then the types of laws and regulations in Indonesia are arranged into a hierarchy of laws and regulations as set out in the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislations, stating that the types and hierarchies of Legislation consist of:

- a. the 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations in place of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulations;
- g. City District Regulations.

¹⁴See Article 1 Angka 2 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234).

¹⁵Maria Farida Indriati S., *Ilmu Perundang-undangan Jilid I...*, p. 42.

In its formation, every statutory regulation must go through 5 stages: planning, drafting, discussing, ratifying or determining, and finally, the promulgation stage.¹⁶ The stages in the formation of laws and regulations of each type are the same. The difference is the institutions that play a role in forming laws and regulations at the central and regional levels. At the central level, the formation of laws and regulations is carried out by the House of Representatives for the formation of laws. The National Legal Development Agency and the Directorate General of Legislation represent the President in terms of the formation of laws and from the government in terms of the formation of laws and regulations. Others at the central level. Meanwhile, legislation at the regional level is carried out by the Regional House of Representatives and the Regional Head by consulting and coordinating plans for the formation of laws and regulations at the regional level to the National Legal Development Agency.¹⁷

Essential stages in the formation of laws and regulations are the planning and drafting stages. It can be said that these two stages are the most decisive whether a statutory regulation that is formed is implementable, in harmony, and does not conflict with the 1945 Constitution of the Republic of Indonesia, and can meet national legal needs. Jurina Rizal, in his paper "Sociology of Legislation," as quoted by Atok, stated that in the procedure for the formation of legislation, there is an ante-legislative stage which consists of 4 stages, namely 1) the research stage; 2) the stage of submitting the initiative proposal; 3) design stage; 4) design submission stage.¹⁸ Thus, it means that the planning and preparation stages are at this ante-legislative stage. This is where the vital function of synchronization and harmonization in the formation of laws and regulations is carried out. However, this does not mean that synchronization and harmonization of laws and regulations are only carried out at the time of their formation. Synchronization and harmonization of laws and regulations are also carried out after the formation of laws and regulations through an evaluation by the Center for Analysis and Evaluation of the National Legal Development Agency's National Law¹⁹ and testing of laws and regulations through the judiciary (judicial review).

Synchronization and harmonization of laws and regulations are carried out to prevent overlapping, non-complementary, non-complementary laws and regulations that do not match the content material with the type of regulation, both to higher laws and regulations well as to values that live and develop in the country. society related to the fundamental values contained in the philosophy of life in the state and the constitution as *staatsgrondgezets*.²⁰ Synchronization

¹⁶See Article 1 angka 1 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234).

¹⁷Interview with Arfan Faiz Muhlizi, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

¹⁸A. Rosyid Al Atok, *Konsep Pembentukan Peraturan Perundang-Undangan*, (Malang: Setara Press, 2015), p. 31.

¹⁹Interview with Arfan Faiz Muhlizi, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

²⁰Maria Farida Indriati S., *Ilmu Perundang-undangan Jilid I: Jenis...* p. 45.

aligns and harmonizes various laws and regulations related to existing and currently drafting laws and regulations governing a particular field. This process aims to see the harmony between one regulation and the regulations above it, both vertically and horizontally. Vertical synchronization is carried out by looking at whether a statutory regulation that applies in a particular field does not conflict with one another and pays attention to the chronology of the legislation in question. Meanwhile, horizontal synchronization is carried out by looking at various equal laws and regulations governing the same field or related fields.²¹ Meanwhile, legal harmonization is an effort or process that seeks to overcome the boundaries of differences, contradictory matters, and irregularities in the law. Efforts or processes to realize harmony, conformity, harmony, compatibility, balance in the laws and regulations as a legal system within a unified framework of the national legal system.²²

Currently, the formation of laws and regulations at the central level is carried out by two institutions within the organizational structure of the Ministry of Law and Human Rights of the Republic of Indonesia, namely the National Legal Development Agency and the Directorate General of Legislation. Duties and functions related to laws and regulations at the central level, especially their formation, are assigned to these two institutions. This means that efforts are made to synchronize and harmonize the laws and regulations in these two institutions. The role of the National Legal Development Agency and the Directorate General of Legislation within the scope of the legislation can be described in the following chart:

Chart 1.²³
Legislation Forming Process



²¹Novianto M. Hantoro *et. al.*, *Sinkronisasi dan Harmonisasi Hukum...*, p. 8.

²²Yordan Gunawan, *Pentingnya Harmonisasi Hukum Negara dan Hukum Islam*, (Yogyakarta: UMY Press, 2012), p. 24.

²³Pusat Analisis dan Evaluasi Hukum Nasional, *Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, 2 Agustus 2016.

The National Legal Development Agency was first established on March 30, 1958, under the name of the National Legal Development Institute (LPHN), established based on the Decree of the President of the Republic of Indonesia Number 107 of 1958 and placed directly under the Prime Minister as a particular agency to carry out national legal development work, reviewing legislation - Invitation to the colonial period systematically based on the aspiration to realize a National Legal System. The task of the National Legal Development Institute at that time was to assist the government in achieving a national legal system by making various efforts, including the preparation of laws and regulations that were in line with the circumstances and interests of the state and the people based on the 1945 Constitution of the Republic of Indonesia, proposing laws and regulations from the Dutch East Indies era that must be changed or repealed, translation and standardization of legal terminology.²⁴

In the period 1958-1961, the National Law Development Institution could not function correctly due to the political and social situation at that time, which did not allow the institution to work correctly. Therefore, on May 6, 1961, this institution was re-established by the Decree of the President of the Republic of Indonesia Number 194 of 1961 and is no longer under the Prime Minister but is under the task of the Minister of Justice.²⁵ Meanwhile, his task remains to carry out national legal development as required by providing the Provisional People's Consultative Assembly Number II/MPRS/1960, which regulates the provisions concerning the principles and foundations of National Law Development. At this time, the National Legal Development Institute has a Planning Agency that establishes the lines and basics and the work procedures for implementing the agency's duties.²⁶

In 1964, the National Law Development Institute was renewed by simplifying its membership. Then in 1965, after the G 30 S/PKI incident, the National Law Development Institute continued to operate based on the Decree of the President of the Republic of Indonesia Number 282 of 1964.²⁷ In 1967 the MPRS leadership submitted a letter to the Chair of the Presidium of the Cabinet and the Chair of the DPR-GR so that the position of this institution was placed under the President. In 1974, through the Third National Law Seminar and with Presidential Decree No. 45/1974, the National Law Development Agency was changed to the National Law Development Agency and had a position as Echelon I under the Ministry of Justice.²⁸

Based on its history, as we have seen, initially, the National Legal Development Agency was formed to assist the president in carrying out national law development in the national legal system, especially related to statutory regulations. Starting from reviewing existing laws and regulations to drafting laws and regulations to meet national legal needs based on the Constitution of the Republic of Indonesia. However, the National Legal Development Agency then adjusted its function to the needs of the present, following the Presidential Regulation of the Republic of Indonesia Number 44 of 2015 concerning the Ministry of Law and Human Rights,

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

the role of the National Legal Development Agency in drafting laws and regulations, can be seen from its function, as follows:²⁹

1. Formulation of technical policies, programs, and budgets in the field of national legal development;
2. Implementation of legal analysis and evaluation, legal planning, legal counseling, and assistance, as well as legal documentation and information networks;
3. Monitoring, evaluation, and reporting on the implementation of legal analysis and evaluation, legal planning, legal counseling, and assistance, as well as legal documentation and information networks;
4. Implementation of the administration of the National Legal Development Agency; and
5. Implementation of functions assigned by the Minister.

To carry out its functions, the National Legal Development Agency is assisted by the Secretariat of the Agency, the National Center for Legal Analysis and Evaluation, the National Legal Planning Center, the National Legal Counseling Center, and the National Legal Documentation and Information Network Center. Based on the functions described, the National Legal Development Agency no longer plays a role in drafting laws and regulations at the central level as a whole. In the formation of laws and regulations, the National Legal Development Agency only plays a role in planning the formation of laws and regulations and preparing Academic Papers, then evaluating the laws and regulations.

Planning for the formation of legislation at the National Legal Development Agency is carried out by the National Legal Planning Center in coordination with the Center for Legal Analysis and Evaluation. Although the National Legal Development Agency does not play a role in drafting laws and regulations at the central level, the National Legal Development Agency has the task of conducting academic studies and research to provide recommendations for guidelines for drafting laws and regulations and preparing Academic Papers that are used as guidelines for making laws and regulations.³⁰ This is where the function of synchronization and harmonization of laws and regulations runs in forming laws and regulations. In addition, the function of synchronization and harmonization of laws and regulations is also carried out in the context of evaluating the laws and regulations that have been formed and implemented previously.

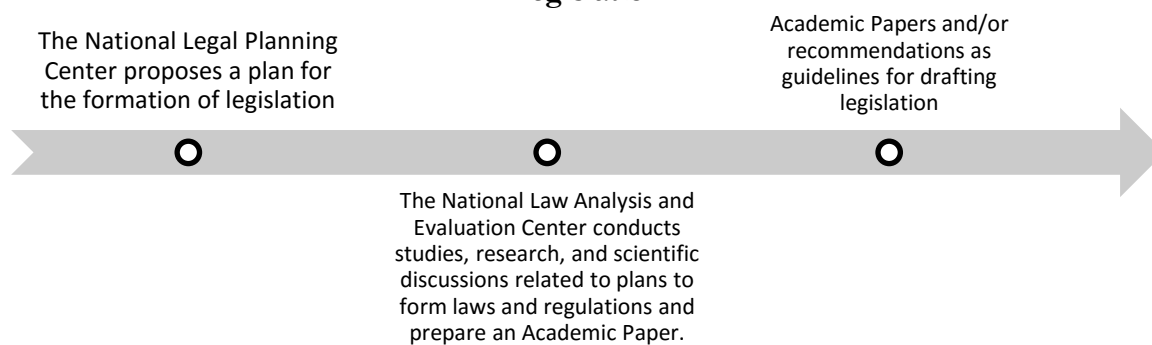
Chart 2.³¹

²⁹See Article 39 Peraturan Presiden Nomor 44 Tahun 2015 tentang Kementerian Hukum dan Hak Asasi Manusia, (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 84).

³⁰Interview with Arfan Faiz Muhlizi, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

³¹Pusat Analisis dan Evaluasi Hukum Nasional, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2 Agustus 2016.

The Role of the National Legal Development Agency in the Formation of Legislation



Academic Papers are manuscripts of research results or legal studies and other research results on a particular problem that can be scientifically justified regarding regulating the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regional Regulation as a solution to problems and needs. The Academic Paper will contain the background, objectives of the preparation, the objectives to be realized, and the scope, scope, object, or direction of law regulation. Therefore, the activities carried out at the Center for Legal Analysis and Evaluation at the National Legal Development Agency in planning the formation of laws and regulations, compiling Academic Papers, and evaluating the laws and regulations that have been formed, can be said to be almost entirely academic activities.³² Efforts to synchronize and harmonize laws and regulations at this stage are the most basic and are carried out in the form of:³³

- 1) Academic studies and researches on various existing laws and regulations by involving academics in scientific discussions related to the plan to establish a statutory regulation;
- 2) Harmonization with principles, theories, dogmas, values that live and develop in society; and
- 3) Synchronization with related laws and regulations both vertically and horizontally;

The studies, research, and scientific discussions are then compiled into an Academic Paper and recommendations, which will later be used as guidelines in designing a statutory regulation carried out by the Directorate General of Legislation.³⁴ Then synchronization is also carried out after the establishment and implementation of laws and regulations. Recommendations on

³²Interview with Arfan Faiz Muhli, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

³³Interview with Arfan Faiz Muhli, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

³⁴Interview with Arfan Faiz Muhli, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

evaluating these laws and regulations are used to improve legal planning, which will be included in the Medium Term Development Plan and the upcoming Long Term Development Plan.³⁵

Efforts to Synchronize and Harmonize Effective and Efficient Laws and Regulations in Indonesia

Legislation must be prepared in a planned, integrated, and systematic manner and supported by definite and binding methods and methods for all institutions authorized to make laws and regulations.³⁶ In order to produce integrated and systematic laws and regulations, it is necessary to pay close attention to the process since the planning and preparation stages are the most critical stages. This is because, at this stage, it is the ideal time for synchronization and harmonization of laws and regulations. Indonesia should start building a legal policy that is responsive to social needs, in addition to providing legal certainty. If it is associated with laws and regulations, it means that the state has the task of producing laws and regulations that can meet the community's legal needs for the long term, not only in the short term. The culture of forming laws and regulations in Indonesia no longer reflects the legal function as stated by Roscoe Pound; namely, the law is a social engineering tool. In other words, the laws and regulations in Indonesia have not produced laws that are lasting and can direct the public to follow and obey the law.³⁷

As a result, there are so many laws and regulations that have to be formed when an event occurs because there are no laws and regulations that regulate it. When the event ends, the laws and regulations that are formed seem to end too. It can be said that the validity period is relatively short, as short as the events that accompany it. The more laws and regulations are formed, the more problems there are, such as overlapping, contradicting higher regulations, the formulation of laws and regulations that are less clear, the implementation of the law being hampered by its implementing regulations, to problems with laws and regulations—implementing legislation that has more and more derivatives and produces different interpretations from the laws and regulations that instruct it, either between laws and regulations at the center and in the regions or between the primary laws and regulations and implementing regulations. This is synchronization and disharmony will, of course, also have an impact on legal certainty. Such laws and regulations depart from the neglect of material deepening, coordination, synchronization, and harmonization. There are at least six factors that cause the occurrence of synchronization and disharmony of laws and regulations, namely:

1. Formation is carried out by different institutions and often at different times;
2. Officials authorized to form laws and regulations change, either because the term of office limits them, transfer of duties, or replacement;

³⁵Interview with Arfan Faiz Muhlizi, Kepala Bidang Politik, Hukum, Keamanan, dan Pemerintahan Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia On 2 Agustus 2016.

³⁶Ahmad M. Ramli, 2008, *Makalah Semiloka Keselamatan dan Kesehatan...*, *Op.cit.*, p. 3.

³⁷Muchsan, Catatan Perkuliahan Pada Mata Kuliah Politik Hukum Program Magister Hukum Fakultas Hukum Universitas Gadjah Mada pada Hari Jum'at tanggal 16 Oktober 2015.

3. The sectoral approach in the formation of laws and regulations is stronger than the systems approach;
4. Weak coordination in the process of forming laws and regulations involving various agencies and legal disciplines;
5. Public access to participate in the process of forming laws and regulations is still limited;
6. There are no definite, standard, and standard methods and methods that bind all institutions authorized to make laws and regulations.³⁸

When a statutory regulation begins to be planned for its formation, on that basis, synchronization and harmonization efforts should also be prepared for it. However, even though at the stage of forming laws and regulations in Indonesia, there is no synchronization and harmonization of laws, there is no definite way and method regarding the mechanism for synchronization and harmonization of laws and regulations.³⁹ Synchronization and harmonization of legislation that occurs, the mechanism is left to the institution in charge of the formation of laws and regulations. Previously, it was found that Presidential Regulation Number 61 of 2005 concerning Procedures for the Preparation and Management of the National Legislation Program which regulates the mechanism for harmonization, unanimity, and consolidation of the conception of the Draft Law, but then the presidential regulation did not go well, because it was formed after the formulation of the Legislation Program National Year 2005-2009 based on the Decree of the House of Representatives of the Republic of Indonesia Number 01/DPR-RI/III/2004-2005 concerning Approval of Stipulation of National Legislation Program 2005-2009 dated February 1, 2005.⁴⁰

Then, after Law Number 10 of 2004 concerning the Establishment of Legislation was replaced with Law Number 12 of 2011 concerning the Establishment of Legislation, Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning Formation of Legislation which includes procedures for the preparation of the National Legislation Program, the preparation of Academic Papers, the preparation of Draft Laws outside the National Legislation Program, and the preparation of other laws and regulations. However, Presidential Regulation Number 87 of 2014, which was then followed by Regulation of the Minister of Law and Human Rights Number 20 of 2015 concerning Procedures and Procedures for Harmonization, Unification, and Consolidation of the Conception of Draft Legislation, also does not regulate in detail and details regarding the mechanism and procedures for synchronization and harmonization in the formation of laws and regulations, when efforts to synchronize and harmonize laws and regulations begin to be carried out, what are the stages of synchronization and harmonization, but only regulate provisions that are general and administrative in the formation of laws and regulations.

The absence of definite ways and methods regarding the mechanism of synchronization and harmonization of laws and regulations creates sectoral egos from each relevant agency when

³⁸ AA Oka Mahendra, "Harmonisasi Peraturan...", tanpa halaman.

³⁹ Ahmad M. Ramli, *Makalah Semiloka Keselamatan dan Kesehatan...*, p. 12.

⁴⁰ *Ibid.*, p. 18.

discussing the preparation of draft laws and regulations. In addition, the absence of a common perception of the draft laws and regulations as a system causes the discussion of the material of legislations to be not comprehensive. Also, it becomes an obstacle to synchronization and harmonization efforts, so often, laws and regulations that have been designed are in sync and disharmony between one regulation and another. other laws and regulations. Then, Bayu Dwi Anggono, in his dissertation, stated that in the practice of making laws, it is often found that lawmakers do not comply with the principles so that many laws and regulations are found that are not following their type, even unfit to be appointed as a law.⁴¹ The formation of laws and regulations is only understood as procedural administration without paying attention to its material. There is a shift in the understanding of material laws and regulations into formal laws and regulations. This is due to the inconsistent mechanism for synchronization and harmonization of laws and regulations due to the lack of certainty of the mechanism in terms of methods and methods. Roscoe Pound, as quoted by Indriati S., Maria Farida, stated:

*that the formulation of the concept of systemic steps for harmonization of law is a general framework that provides guidelines in the adjustment of legal principles and systems in the process of forming laws and regulations, in the context of realizing laws that are harmonious, integrated, consistent and adhere to the principles.*⁴²

The harmonization of the national legal system lays down the mindset that underlies the preparation of the legal system within the framework of the national legal system, which includes:

- a) The legal material component or legal system consists of external legal order, namely statutory regulations, unwritten law including customary law and jurisprudence, as well as internal legal order, namely the legal principles that underlie it;
- b) Components of the legal structure and its institutions, which consist of various institutional bodies or public institutions and their officials; and
- c) The legal culture component, which includes the attitudes and behavior of officials and community members concerning other components in the process of organizing social life.⁴³

Based on Roscoe Pound's opinion, it can be formulated to produce an effective and efficient effort to synchronize and harmonize laws and regulations. There are at least several things that must be considered. First, there must be a definite way and method regarding the synchronization and harmonization mechanism of legislation so that implementing institutions have clear guidelines regarding what aspects must be synchronized and harmonized and the stages. This is done to minimize the sectoral ego of each agency because it must follow a clearly defined mechanism. As stated by Ahmad M. Ramli, it will be a problem if the material deepening, coordination, synchronization, and harmonization are ignored in the process of forming laws and

⁴¹Bayu Dwi Anggono, *Hukum Online*, "Terjadi Pergeseran Pemahaman dalam Pembentukan Undang-Undang", www.bukumonline.com.

⁴²Maria Farida Indriati S., *Ilmu Perundang-undangan Jilid I...*, p. 610.

⁴³Kusnu Goesniadhie S., *Harmonisasi Hukum Dalam...*, p. 10.

regulations. Synchronization and harmonization of laws and regulations must be priorities in the framework of national law development. Given the importance of synchronization and harmonization of laws and regulations, efforts to synchronize and harmonize laws and regulations must be carried out systemically from an early age, namely since the preparation of Academic Papers, preparation of the National Legislation Program, to the preparation of Draft Laws.

Second, the institution that carries out the synchronization and harmonization should be left to an independent institution and carry out its functional tasks to the fullest. This means that all matters concerning the formation of laws and regulations are left to only one institution, starting from planning, preparing academic texts, and drafting laws and regulations, to evaluating the laws and regulations that are formed. This is intended so that the ideas of the laws and regulations formed are interpreted appropriately following the academic texts made into the draft laws and regulations. In addition, if this task is left to only one institution, it will facilitate the process of synchronization and harmonization itself because it has been systematically regulated to produce legislation that is complete and unified with one another. This effort must be carried out on an ongoing basis. In other words, when synchronizing and harmonizing a statutory regulation since the preparation of the Academic Paper, the synchronization and harmonization efforts should become recommendations that need to be considered for synchronization and harmonization at the next stage, namely at the stage of drafting legislation.

It is better to maintain consistency in synchronizing and harmonizing laws and regulations. It is still carried out by one institution from the beginning of planning the formation and preparation of Academic Papers to prepare Draft Laws and Regulations. In this case, according to researchers, it is more appropriate if carried out by the Development Agency National Law. Even though they are under the same auspices and work in the legislative drafting team, the National Legal Development Agency and the Directorate General of Legislation certainly have different views regarding efforts to synchronize and harmonize laws and regulations. Even though synchronization and harmonization have been carried out at the planning and preparation stage of the Academic Paper, along with recommendations for the preparation of draft laws and regulations, in some conditions, there will be differences of opinion when it is stated in the form of draft legislation.

This difference will undoubtedly result in the incompatibility of the ideas in the preparation of the Academic Paper with what will be poured into the draft legislation. Thus, efforts to synchronize and harmonize laws and regulations become ineffective and inefficient when carried out by two institutions. In addition, when draft legislation has become a statutory regulation, the task of evaluation is returned to the National Legal Development Agency. When it is found that provisions are out of sync and disharmony, the National Legal Development Agency can only conduct studies and provide recommendations for improvements to existing laws and regulations through the Center for Legal Analysis and Evaluation. The follow-up to this recommendation is not immediately possible. Improvements to evaluating new laws and regulations can be made after the recommendations are included in the Medium Term Development Plan and the Long Term Development Plan. The spirit of forming the National Law Development Institute, which

was later changed to the National Law Development Agency, brings hope for the creation of a national law that is in line with the 1945 Constitution of the Republic of Indonesia and can meet the needs of national law by conducting comprehensive guidance on the national legal system. This is following the vision and mission of the National Legal Development Agency. The vision is that the community will obtain legal certainty, and its mission is as follows:⁴⁴

1. Realizing quality laws and regulations;
2. Realizing quality legal services;
3. Realizing quality law enforcement;
4. Realizing respect, fulfillment, and protection of human rights;
5. Realizing administrative management services of the Ministry of Law and Human Rights; as well as
6. To create a professional and integrity Ministry of Law and Human Rights apparatus.

Thus, it is more appropriate if the affairs of synchronization and harmonization of laws and regulations as a whole starting from planning, preparation of academic texts, drafting laws and regulations, and evaluations are submitted to the National Legal Development Agency as an institution that was formed from the start to handle legal development issues. Especially in-laws and regulations, following its mission, namely "to create quality laws and regulations." This means that the maximization of functions can be carried out at the National Legal Development Agency by strengthening its functional duties by reuniting the Directorate General of Laws and Regulations to become part of the National Legal Development Agency. The problem of synchronization and harmonization of laws and regulations will become a complete system under one National Legal Development Agency institution.

With the direction of a one-door system related to planning and drafting laws and regulations, particularly the problem of synchronization and harmonization, later, under the National Legal Development Agency, improvements to the national legal system, especially issues of legislation, can be carried out systemically and sustainably. It starts from the inventory of laws and regulations, planning the formation of laws and regulations, preparing Academic Papers and studies for the formation of laws and regulations, drafting laws and regulations, and evaluating the laws and regulations that are formed. So, improvements to the statutory regulations can be carried out more quickly, of course with the hope of a regulation that requires all agencies, both those that will form and those that already have laws and regulations, to register them with the National Legal Development Agency for maximum synchronization and harmonization efforts. so that in the future, it will produce quality, long-lived, and implementable legislation.

Thus, based on the results of the synchronization and harmonization carried out by the National Legal Development Agency, statutory regulation is declared to be synchronous, harmonious, and eligible to apply as a statutory regulation or feasible to be submitted as a draft

⁴⁴Badan Pembinaan Hukum Nasional, "Visi dan Misi", *bphn.go.id*, diakses pada Hari Kamis Tanggal 18 Agustus 2016.

statutory regulation. The issue of the publication of laws and regulations must also be arranged in such a way to facilitate efforts to synchronize and harmonize laws and regulations. In other words, the authority to publish laws and regulations is also delegated to the National Legal Development Agency so that the publication of laws and regulations that reach the public can be adequately controlled, especially concerning newly issued laws and regulations. Amended, canceled by the Constitutional Court, or revoked and no longer valid as statutory regulation.

If the Directorate General of Legislation wants to maintain its existence, in the opinion of researchers, the Directorate General of Legislation is better off given an institutional administrative task. In other words, the Directorate General of Legislation acts as the first post to take care of the administrative needs of statutory issues such as handling the submission of plans for the formation of legislation from the initiator, publications, as well as being a liaison between the initiator and the National Legal Development Agency in a committee. Inter-Ministry in terms of the formation of legislation. Although an Inter-Ministry Committee is formed in the formation of legislation, synchronization and harmonization are carried out separately, both by the National Legal Development Agency and by the Directorate General of Legislation. Whereas in the early stages of planning the formation of laws and regulations and preparing academic texts, the National Legal Development Agency has also carried out similar synchronization and harmonization efforts.

In addition, the two institutions also conduct separate evaluations of the prevailing laws and regulations, in which the results of the evaluations are included in separate recommendations. The establishment of the Directorate General of Legislation as a separate unit which is expected to assist the task of the National Legal Development Agency in terms of the formation of laws and regulations, has not been effective. In fact, in the field, it is still found that many laws and regulations are produced in synchrony and disharmony with one another, are not implemented, and are short-lived. This means that separating the task of establishing laws and regulations into two institutions is still ineffective and efficient in producing synchronous, harmonious, implementable, and responsive laws. It is not an easy thing to improve the national legal system, especially laws and regulations. However, suppose the government is serious and has a long-term goal to produce quality laws and regulations. In that case, it should start from the most basic stage, namely controlling the formation and evaluation of laws and regulations through efforts to improve synchronization and harmonization of laws and regulations.

CONCLUSION

Based on the description discussed in the description above, a conclusion can be drawn from this paper: First, efforts to synchronize and harmonize laws and regulations must begin at the planning stage of their formation. In carrying out the duties and functions of synchronization and harmonization of laws and regulations, both at the formation stage and the evaluation stage, it is carried out separately and not systematically. In addition, there are no regulations regarding the exact method and method regarding the synchronization and harmonization mechanism, so that the legislators tend to ignore this stage, which can be seen from the quality of the laws and

regulations produced. Thus, the synchronization and harmonization of laws and regulations that are carried out are ineffective and efficient. Second, in the context of realizing the quality and enforceable laws and regulations as progressive laws, synchronization and harmonization efforts must be carefully considered. Establishing definite ways and methods regarding the mechanism and rearranging the inventory and publication of laws and regulations are ways that can be taken to be able to produce quality laws and regulations and control the laws and regulations that are issued because synchronization and harmonization efforts are processes that greatly determine the quality of statutory regulation and determine whether or not the legislation is implemented.

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