

SYNCHRONIZATION, HARMONIZATION AND FACILITATION: INSTITUTIONAL LINKAGES AND LEGISLATIVE IN DRAFTING OF REGIONAL REGULATIONS

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Abstract

Harmonization of this conception aims to make statutory alignments vertically and horizontally, as well as the preparation techniques. Hence, harmonization of conceptions is the stage of forming laws and regulations that can be used as a mechanism to prevent disharmony with other laws and regulations. The research is normative-juridical or known as doctrinal legal research. The results show that the harmonization of laws and regulations is increasingly significant in the midst of overlapping laws and regulations both at the central and regional levels as well as in accordance with the hierarchy. Harmonization is needed towards creating legal certainty and guarantees, order, and a sense of protection for anyone with an interest. Synchronization, harmonization and facilitation of laws and regulations have an important meaning where laws and regulations are an integral part or sub-system in the legal structure of a country so that these laws and regulations can be interrelated and dependent and can form a unified whole. Synchronization, harmonization, facilitation are carried out to obtain a good law and regulation not only by adjusting and harmonizing the various meanings and sentences in various laws and regulations. But it must also pay attention to the background and rationale, as well as the system that influences the formation of these laws and regulations (original intent).

Keywords: Synchronization; Harmonization; Facilitation; Regional Regulations

1. INTRODUCTION

The problems regarding laws and regulations —both central and regional— are very broad, starting from the planning stage to implementation and its enforcement. In general, issues related to laws and regulations are no longer a secret. The emergence of legal uncertainty due to overlapping, inconsistent, multiple interpretations and non-operational laws and regulations has been the subject of discussion for the last few years. However, efforts to get out of this situation did not seem to produce satisfactory results. ¹ There are still many complaints from the public including economic actors.

In Indonesia, hyper-regulations produced causing regulatory disharmony, so it is necessary to perform synchronization, harmonization which is an effort to harmonize a law and regulation with other laws and regulations, both to higher, equal and lower in order to ensure that all arranged systematically and do not overlap with one another. There are several factors that cause a lot of regulation in our country, *the first*, many people think that every legal problem can be solved by forming a regulation; *the second*, every examiner in conducting his duties and functions always questions whether or not there is a regulation as legal umbrella or basis; *the*

third, in determining the budget, the Ministry of Finance also often passes or not budgets for ministries/agencies based on whether there are regulations as a legal umbrella.²

In addition to these factors, there are several other fundamental problems; *the first*, there is no synchronization of statutory planning, both at the central and regional levels with development planning and policies; *the second*, there is a tendency for laws and regulations to deviate from the content that should be regulated; *the third*, disobedience to the content material raises the issue of “*hyper-regulation*”, *the fourth*, the effectiveness of laws and regulations is also often a problem that arises during implementation. The situation is exacerbated by the absence of monitoring and evaluation procedures for statutory regulations and the absence of a special institution that handles all aspects of the statutory regulatory system.³

Harmonization of laws and regulations has an important meaning where laws and regulations are an integral part or sub-system in the legal structure of a country so that it can be interrelated and dependent and can form a unified whole.⁴ Synchronization and harmonization as performed to obtain a good law and regulation is not only adjusting and harmonizing various meanings and sentences in various laws and regulations, but it must also pay attention to the background and rationale, as well as the system that influences the formation of these laws and regulations.⁵

In Indonesia, harmonization of laws and regulations is an urgent need. The reason why it is said to be urgent is because the problem of legal development increasingly requires a holistic approach.⁶ In the era of globalization, where development still relies on a sectoral approach, it will only result in patchy solutions embroidery/ haphazard, so as not to solve various problems in the implementation of existing national development.⁷

Regional regulations like other laws and regulations have a function to create legal certainty (*rechtszekerheid*). For this reason, –the functioning of legal certainty–statutory regulations must meet certain requirements, including consistency in the formulation wherein the same statutory regulations must maintain a systematic relationship between the rules, standard structure and language, and the existence of a harmonized relationship between various statutory regulations.

2. METHODOLOGY

The research is normative-juridical or known as doctrinal legal research. It is aimed at written regulations or other legal materials.⁸ The author used a statutory approach as well as interviews. This paper applied the qualitative method and conceptual, historical, as well as comparative approach through a literature review to examine the issue discussed.

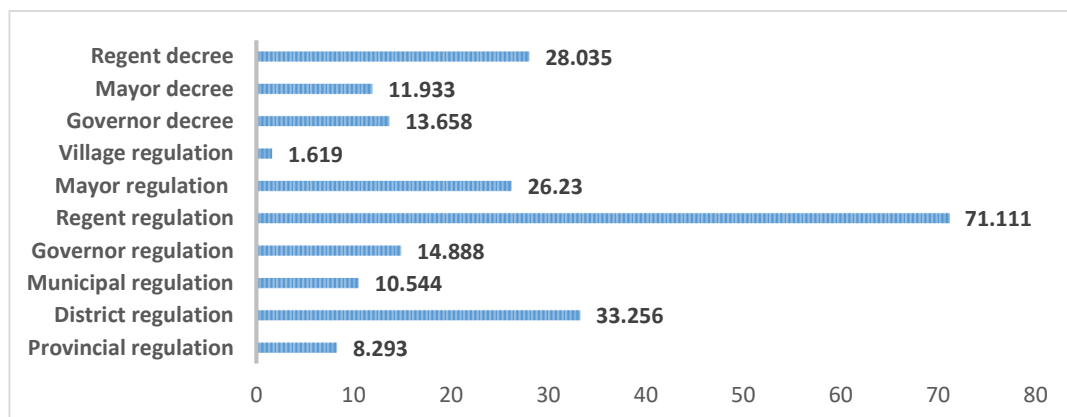
3. RESULTS AND DISCUSSION

3.1. Disharmonization and Hyper-Regulation: Challenges in Forming Legal Products in the Regions

Arrangements regarding synchronization, harmonization and facilitation of laws and regulations are needed to provide guidelines. The existence of arrangements regarding synchronization, harmonization and facilitation in the form of laws and regulations is very important in order to provide a form of legal certainty for the implementation of harmonization. However, legal certainty is not limited to being regulated in a statutory regulation. Legal certainty is also a guarantee that a written regulation is implemented in truth.

As well as synchronization, harmonization and facilitation of legislation is not only regulated or there has been an arrangement in a statutory regulation, but there must be a guarantee that all arrangements regarding synchronization, harmonization and facilitation are implemented properly. Initial intention of harmonization from the historical context will not only make it easier to analyze the initial intention of harmonization of draft laws and regulations in Indonesia, but will also show when there has been a shift in the intended initial intention.⁹ The shift in the initial intention of harmonization is used as an analysis of whether the existing arrangements regarding harmonization still contain the same spirit as the initial intention the first time the idea of harmonization was adopted in the mechanism for forming laws and regulations. Thus, the flow of arrangements regarding the harmonization of the drafting of laws and regulations will demonstrate the continuation of the initial intention of adopting harmonization in the legislation system. The initial intention of harmonization is still consistent as it was first conceived, or there has been a shift in meaning and purpose in harmonization which will be traced historically. This search is carried out by presenting laws and regulations that regulate the harmonization of the laws and regulations. These laws and regulations include laws and regulations that have been revoked, amended, or those that are still valid today (See: Chart 1).

Chart 1: List of regional legal products in Indonesia



Source: JDIHN, <https://jdihn.go.id/dokumen-hukum>, accessed on 23 December 2021 (edited)

The meaning of harmonization, unification and consolidation of conception is not explained in Act No. 12/2011. Therefore, in 2012 in the harmonization guidebook for drafters of existing laws and regulations at the Directorate General of PP outlines what is meant by harmonization, integration and consolidation of conceptions by searching etymologically. Etymologically, the meaning of harmonization, unification, and consolidation of conceptions as follows:¹⁰

1. Harmonization

Harmonization is an activity to harmonize or align. Also, it refers to the opinion of Kusnu Goesniadhie who concludes the meaning of harmonization as an effort or the process of realizing harmony, suitability, compatibility and balance between various factors in such a way that these factors produce unity or form a whole of the law as a system.¹¹

2. Rounding

Rounding (in Indonesia, “*Pembulatan*”) contain meaning to shape to be round or to form cohesiveness, wholeness as a whole. It refers to several meanings, including from the Big Indonesian Dictionary defines as a process, deed, way of integrate. The equivalent word in English is integration which means integrating or being integrated. Thus, *pembulatan* means a process to make all elements integrated into a unified whole.

3. Consolidation

Consolidation, according to the Big Indonesian Dictionary is a process, method, act of consolidate (enforcing, stabilizing). The word consolidation itself means firm, strong, fixed.¹² In English, the equivalent word for consolidation is *consolidation*, which means consolidating or being consolidated. Thus, consolidation is defined as making solid, coherent or compact, stable, strong or firm.

4. Conception

Conception is defined as an understanding or design (ideals and so on) that already exists in the mind. In English, conception is defined as conceiving of an idea or plan.

The harmonization of conceptions in the regions was conducted by the legal bureau/department for the draft regional regulation which was an executive initiative, while the draft regional regulation as initiated by legislative was harmonized by *Balegda (Bapemperda)*.¹³ By amending the provisions of Article 58 paragraph (1),¹⁴ the harmonization authority which was originally held by the legal bureau/department is revoked and becomes the full authority of the new ministry/institution which specifically handles the affairs of forming statutory regulations. However, because the new ministry/institution has not yet been formed, it is in a transitional period before the new ministry/institution is formed the authority for harmonization is fully under the authority of the Ministry of Law and Human Rights through the regional offices in each province.

Public involvement in the formation of laws and regulations is also guaranteed by law by stating that the public has the right to provide input orally and/or in writing in the formation of laws and regulations.¹⁵ As for input from the public on draft laws and regulations, it can be

conveyed through public hearings, working visits, outreach, and/or seminars, workshops, and/or discussions. The public has the right to get explanations and information from the authorities that with the enactment/approval of these laws and regulations, what benefits will be obtained, losses that may be suffered, and will the needs of the community be met.

No need to wait until public hearings, work visits, outreach and/or seminars, workshops and/or discussions are held¹⁶ for the public to be involved in the formation of laws and regulations. During the planning meeting, drafting or discussing the draft laws and regulations, the public can be involved. This is because in the preparation of NA/explanation/information, empirical research must be carried out involving the public as research target. This research was carried out in an effort to find and obtain solutions to solve the problems currently being faced by the community in the form of regulations, as outlined in draft laws or draft regional regulations.

Referring to the opinion of Bagir Manan which states that external function of law is to make a change in society. Thus, the problem is in public awareness as implementers, so it is law that can be used as coercion so that these changes occur. The law can be used as a coercive tool for changes to occur in society so that they are accustomed to existing provisions set.

However, what needs to be considered beforehand is how the legislators in the regions commit to the obligation to harmonize draft regional regulations in accordance with the principles of forming good laws and regulations in the form of regulations. The legal political approach is a strategic step to deliver the formation of a regulation that requires it to be implemented harmonization. This is in line with the opinion of Padmo Wahyono who describes legal politics as the basic policy of state administrators in the field of law that will, is and has been in effect, which originates from the values that apply in society to achieve the goals of the country as aspired to. Thus, the legislator as shaper of regional legal products should be able to determine the basic agreed policies for the sake of institutional harmonization.

Bagir Manan argues that internally there are 3 (three) main spheres of legal politics, namely the politics of law formation, the politics of law content, and the politics of law enforcement.¹⁷ The politics of law formation by Bagir Manan is described as the policy concerned with the creation, renewal and development of law which includes the policy (formation) of legislation, policy of jurisprudence law or judge' decisions, and policy on other unwritten regulations.¹⁸

Thus, through a policy creation from lawmakers¹⁹ to harmonization, a harmonization mechanism will be created based on the principles of forming good statutory regulations. Creating policies that guarantee the implementation of harmonization in accordance with the principles of forming good laws and regulations that can achieve the maximum possible spiritual and material well-being for society and individuals through reforms in the regional legislation system. With this policy, it can provide legal certainty that legal products produced by the regions can continue to develop according to the needs of the community. This policy can be concretized one way or another through the obligation to provide administrative and substantive evidence that the draft laws and regulations have been institutionally harmonized.

Institutional harmonization can be used as a guarantee for the orderly fulfillment of regional regulations. In addition to administrative and substantive evidence for the harmonization of the draft legislation in question, it is also necessary to have a coercive provision that set forth in the arrangement regarding the harmonization of regional regulations. Such coercive provisions can be in the form of a consequence that is stated explicitly in the provisions of laws and regulations. The inclusion of these provisions will act as a coercion for regional regulation makers to harmonize according to statutory provisions.

The implementation of harmonization of executive regional regulation drafts under new ministries or institutions can become clearer, firmer, orderly, and can be guaranteed to be carried out in accordance with the formal requirements for the formation of regional regulations. On the other hand, the transfer of authority to centrally harmonize draft executive regulations can become a new problem because the regional conditions are not fully understood by the central government. The central government's lack of understanding of regional conditions and needs will become a separate obstacle in carrying out harmonization analysis according to the principles of forming good laws and regulations.

It is also possible that the transfer of authority to harmonize draft executive regulations from the regions to the center will only be a form of “take over” of authority. The takeover in question is the transfer of the problem of harmonization of draft regional regulations from the regions to the center without any changes or unraveling the complexity of harmonization practices in accordance with the principles of forming good laws and regulations. If this is the case, then the transfer of authority will not provide any legal certainty, let alone a form of strengthening the implementation of harmonization of executive initiative draft regional regulations.

In making changes to a law, it must also be understood that the expected impact may not occur. Not all legal changes can have an impact on the renewal of society. Laws that exist in the form of laws and regional regulations are political products²⁰ and are born from political processes so that political factors or elements²¹ are also difficult to separate from the legal product itself. Therefore, it is very important to have a strong basic idea for making changes to a law or regional regulation.²² Changes in law must be based on the interests of the entire community, nation, state, and the homeland of Indonesia.

Harmonization of this conception aims to make statutory alignments vertically and horizontally, as well as the preparation techniques. Hence, harmonization of conceptions is the stage of forming laws and regulations that can be used as a mechanism to prevent disharmony with other laws and regulations. Harmonization of conception is very important in order to prevent disharmony between laws and regulations. Even more so with the implementation of regional autonomy which gives authority to changes to a law or regional regulation. Changes in law must be based on the interests of the entire community.

Harmonization of conception is very important in order to prevent disharmony between laws and regulations. Moreover, with the implementation of regional autonomy which gives authority to the regions to form regional regulations. Regional autonomy is a particular

challenge in the legislative system in Indonesia. Regions are given full authority to form regional regulations in the context of carrying out regional autonomy and assistance tasks, which are adapted to regional needs and conditions. However, it must be remembered that a regional regulation is a product of regional law which is an integral part of the Indonesian national legal system, so that it must be in harmony with national law.²³

On the other hand, if there is no guarantee that as a rule of law there has been harmony of all laws and regulations, then credibility as a rule of law will be questioned. The impact is not only on the integrity and credibility as a rule of law nation which is doubtful. There will be doubts about the fulfillment of the sense of justice in society through regulations or laws and regulations. Benefits for the community from the existence of a statutory regulation will also be sanctioned.

Ideally, consistency between the initial intention and its concretization in the form of a law is able to provide a meaning that the objective of creating harmonization and synchronization between laws and regulations materially, formally, and technically in preparation has or is currently undergoing changes and better developments. Likewise, the development of laws that contain arrangements regarding harmonization which have progressed in a better direction without abandoning the original intent of the harmonizing draft laws and regulations. The harmonization of conception aims to make statutory alignments vertical and horizontal, as well as the preparation techniques. Thus, harmonization of conceptions is the stage of forming laws and regulations that can be used as a mechanism to prevent disharmony with other laws and regulations.

Regional regulations as part of the legal system must emphasize logical homogeneity, so that in their interactions with each other they functionally support the effectiveness of their implementation, because their arrangement is systematic, logical and rational. Therefore, the contents of laws and regulations that are at the same level must be harmonious with each other to ensure legal certainty. Indeed, in the event that there is material content that is not compatible in laws and regulations of the same type and level, the legal principle “*lex specialis derogate lex generalis*” can be applied, if one statutory regulation is *lex specialis*. In addition, the legal principle of “*lex posteriori derogat lex priori*” can also be applied, where new laws and regulations override the old ones, if both are same and regulate the same matters.

4. IMPLICATIONS AND RECOMMENDATIONS

In Indonesia, the harmonization of laws and regulations is increasingly significant in the midst of overlapping laws and regulations both at the central and regional levels as well as in accordance with the hierarchy. Harmonization is needed towards creating legal certainty and guarantees, order, and a sense of protection for anyone with an interest. Synchronization, harmonization and facilitation of laws and regulations have an important meaning where laws and regulations are an integral part or sub-system in the legal structure of a country so that these laws and regulations can be interrelated and dependent and can form a unified whole. Synchronization, harmonization, facilitation are carried out to obtain a good law and regulation not only by adjusting and harmonizing the various meanings and sentences in various laws and

regulations. But it must also pay attention to the background and rationale, as well as the system that influences the formation of these laws and regulations (*original intent*).

Arrangements about the harmonization of the draft regional regulations that currently exist, both in the form of laws and regulations have undergone development from the initial intention of adopting the mechanism for harmonization of the development of draft laws and regulations, including the harmonization of draft laws and regulations is increasingly widespread, not only the draft existing laws and regulations at the center, but also the draft regional law products. Thus, it will increase the competence of drafters of laws and regulations so that in doing harmonization they do not only dwell on technical preparation or legal drafting, but are able to harmonize the substance or material content in every legal product made.

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Declaration of Interest

Authors declare there are no competing interests in this research and publication.

Notes

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- 19) Legislators are the holders of legal authority to form laws and regulations, both at the central level, namely the President and legislative, as well as at the regional level, namely the Head of the Region and the regional legislative.
- 20) Mahfud MD was the first to assert that law is a product of politics, in his dissertation on legal politics at Gadjah Mada University. In the development of legal politics by Abdul Latif and Hasbi Ali described 4 (four) political influences on the power of law, one of which can be seen from the political process that forms the law. This can be seen from the fact that law is a product of a political process without distinguishing whether the process is processed by political actors who have equal power or carried out through the domination of one party.
- 21) According to Sri Soemantri, political superstructure is relevant state institutions, which are generally in the form of the legislature with legislative power, the executive with the executive power, as well as the judicial institution with the power judiciary (judiciary with judicial powers). While the political infrastructure of a country generally has 5 (five) components, namely political parties, interest groups, pressure groups, media of political communication, and political figures.
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