

THE POLITICS OF LEGISLATION IN THE NATIONAL LEGAL SYSTEM

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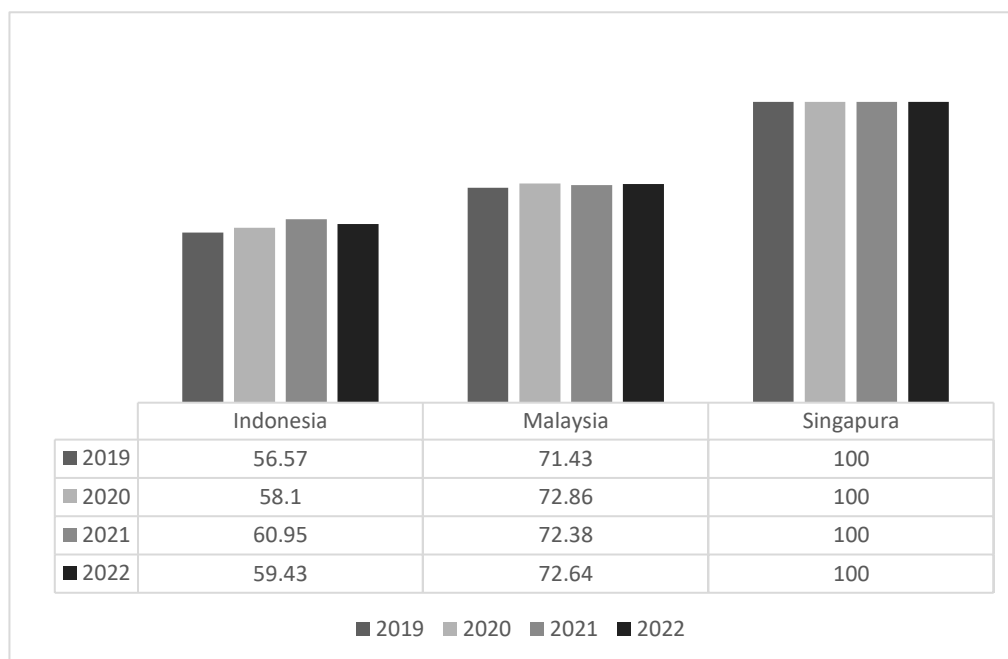
ARTICLE INFO	ABSTRACT
<p>Keywords: Politica, Legislation, Problems, Reconceptualizon</p> <p>How to cite: Hamdana, Adam Imam. (2024). Politics of Legislaion in the National Legal System, <i>Veteran Law Review</i>. 7(2). 153-162.</p> <p>Received:2024-10-13 Revised:2024-10-17 Accepted:2024-11-16</p>	<p><i>As a country that adheres to a civil law legal system, the law is one of the main sources of law in Indonesia. This is what initiates the importance of formulating the politics of legislation properly and appropriately so that the resulting law products are also of high quality. This research uses juridical-normative research and focuses on the politics of legislation in Indonesia and takes a comparison in Australia. As a result, the politics of Indonesian legislation has been normalized in the national legal system but still has problems. Thus, in order for the resulting legislation products to remain in the corridor, it is important to reconceptualize the politics of legislation by including it in the constitution as has been done by Australia.</i></p>

1. Introduction

Written laws (statutory laws) are the main source of law in a country that predominantly adheres to a civil law legal system. As part of a legal system, laws are a means of realizing the state's objectives in the concept of a welfare state mandated in the Preamble of the 1945 Constitution. However, in reality, the strategic role of the law is not in line with the fact that many laws are not qualified and indicated to be problematic.

A report issued by the World Bank entitled Worldwide Governance Indicators assesses the quality of regulations. As a result, Indonesia's regulatory quality position is still low and worse than two neighboring countries, Malaysia and Singapore.(Daniel & Aart, 2023)

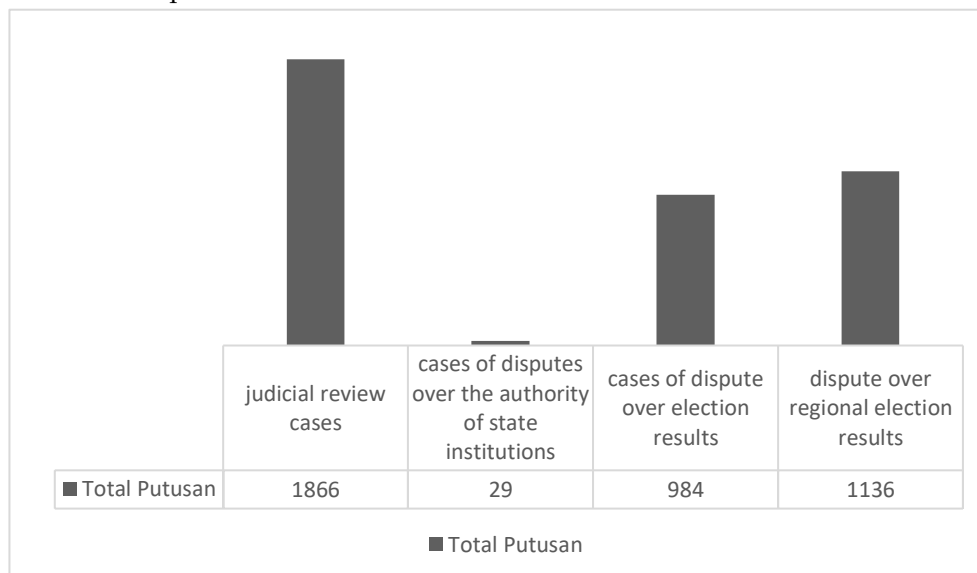
Table 1. Comparison of Regulatory Quality Score of Indonesia and Neighboring Countries, 2019-2022



Source: *Worldwide Governance Indicators, World Bank*

An indicator of the poor quality of laws can also be seen from the high rate of judicial review of laws before the Constitutional Court, out of a total of 4015 decisions issued by the Constitutional Court, 46% of them were decisions on judicial review of laws.

Table 2. Comparison of Total Constitutional Court Decisions, 2004-2024

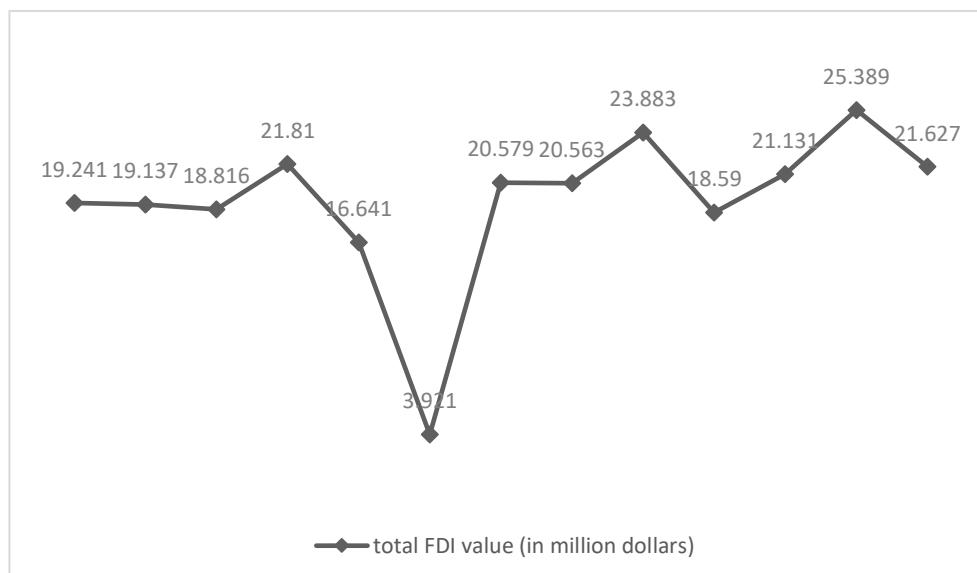


Source; *Constitutional Court of the Republic of Indonesia, <https://www.mkri.id/index.php?page=web.Putusan&id=1&kat=1&menu=5>*

Various problematic laws actually have a huge impact on the socio-economic life of the community. The National Development Planning Agency (BAPPENAS) in its report states that problematic laws have a significant impact on the attractiveness of foreign investment, which in turn affects the loss of employment opportunities. (Bappenas, 2015) The report turned out to be agreed with the facts of research conducted by the United Nations Trade and Development (UNCTAD) entitled World Investment Report, which stated that the amount of foreign direct investment (Foreign Direct Investment) to

Indonesia in the past decade was still stagnant and fluctuating at 20,000,000 USD.(UNCTAD, 2024)

Chart. 1. Foreign direct investment value, 2011-2023



Source: *World Investment Report, UN Trade and Development's (UNCTAD)*

One of the main reasons why the quality of laws is still imperfect is because the current political policy of legislation still leaves a residue of complex problems. In fact, the politics of legislation is one of the important variables in the formation of laws. How to produce quality legislation will be determined by the politics of legislation in the country. Because in fact, legislation itself also means the process of forming law (legislation).(Futuhena, 2013) This is also relevant to research conducted by Aan Eko that currently the politics of legislation, especially regarding the rules for the formation of legislation, is still very far from the ideals of the rule of law.(Widiarto, 2012)

As a result, there is a paradoxical condition where on the one hand the law has a central position as a means of realizing public welfare, but on the other hand the law is still followed by various problems from the political aspect of legislation and has an impact on hampering the manifestation of the principle of the welfare state. In this paper, the author will review how the existence of political legislation in Indonesia today and the problems that accompany it.

2. Methods

The research method used in this article is normative juridical, so it focuses on the application of rules or norms in positive law.(Ibrahim, 2006) The author explores in more depth how issues regarding the politics of current legislation based on existing legal literature and then correlates it back with theories, concepts, legal principles and laws and regulations related to this research.

3. Discussion

3.1 Definition and Relevance of Political Legislation

Sri Soemantri as cited by Susi Dwi Harijanti defines the politics of legislation as a policy relating to legislation.(Harijanti, 2024) The policy contains:

- a) Form and order of legislation.
- b) Content material and procedures for the preparation and formation of laws and regulations.

The politics of legislation is different from the politics of law. Political legislation is more specific and narrow, referring to the process of making laws and what matters can be regulated in the formalization. The purpose of political legislation is to realize political policies or programs through formal legal instruments in the form of laws. Thus, the politics of legislation is directly related to how state policies are translated into legal products..(Manan, 1993)

When talking about the Politics of Law, it has a broader scope. The politics of law refers to the direction, goals, and policies set by the state in determining how laws are created, applied, and interpreted. The politics of law is concerned with the basic principles of how law is used as a tool to achieve certain social, economic and political goals in a country.(MD, 2009) Legal politics is synonymous with the state's strategy in shaping a legal system. Although the politics of legislation and the politics of law are different, they are still positioned as two aspects that complement one another. However, the law to be formed is clearly influenced by legal politics, which is the official policy of the state relating to the enactment of law.(Astomo, 2014)

The existence of political legislation becomes urgent considering the background of Indonesia's legal system is dominantly initiated by the civil law style. Quoting J. H Merryman's opinion that a country with a civil law legal system has three main sources of law, namely laws, derivative regulations, and conventions that do not conflict with the law.(Merryman & Pérez-Perdomo, 2018)

Good legislative politics serves as a guardrail so that the legislative products issued are always coherent with the goals of the state. Moreover, the reality is that the process of forming and drafting laws is highly dependent on the political power and compromises that exist in parliament. So that the process is not ridden by certain political interests, it is important to formulate what matters should be used as a guide for related institutions in the formation and drafting of laws.

3.2 Political Existence of Legislation

Political legislation in the national legal system is regulated in two different types of norms. Some are contained in the basic norms, namely the 1945 Constitution of the Republic of Indonesia, while others are regulated in the form of laws. However, when analyzed in more detail, the regulations regarding the politics of legislation contained in the 1945 Constitution of the Republic of Indonesia are still unclear.(Harijanti, 2024) Apart from the nature of basic norms, which are supposed to cover matters that are still basic and outline,(Farida Indrati, 2020) The existence of such a nebulous law has led to absolute power for the legislator in the formation and drafting of laws and regulations..(Harijanti, 2024)

In the 1945 Constitution of the Republic of Indonesia, the regulation on the politics of legislation is limited only to which branch of power has the right to

issue a law and how brief the mechanism is in proposing, discussing, and ratifying it. Further provisions on the procedures for the formation of laws, based on Article 22A of the 1945 Constitution, are delegated to the law. The article provides discretion for lawmakers to freely fill in any matters relating to laws. Starting from the making, hierarchy, type, content material and all other matters relating to legislation.

In 2004, Law Number 10/2004 on the Formation of Legislation (Law 10/04) was passed for the first time. The law regulates in detail how the process of forming laws, as well as the types, materials, principles, and hierarchy of laws and regulations that exist in the national legal system. This law is the beginning of the political construction of legislation formalized in law.

Law 10/04 in its development underwent various revisions and improvements. The first revision occurred in 2011 with the enactment of Law Number 12/2011 on the Formation of Legislation (Law 12/11). There are several fundamental and important differences between Law 10/04 and Law 12/11, these differences include;

a) The addition of types of laws and regulations in the hierarchy by including the People's Consultative Assembly Decree (TAP MPR) into the hierarchy of regulations.

b) Changes to the arrangements regarding the content material that must be regulated in the law.

Although Law 12/11 is a revision and improvement of Law 10/04, there are still shortcomings that require amendments to the law. This is what initiated the formation of Law Number 15/2019 Amendment to Law Number 12/2011 on the Formation of Laws and Regulations (Law 15/19). There is new material in this law, namely the inclusion of provisions regarding monitoring and review or also known as the evaluation of laws and regulations. Furthermore, Law Number 13 Year 2022 Second Amendment to Law Number 12 Year 2011 on the Formation of Legislation (Law 13/22). This law was born because it is a follow-up to the Constitutional Court Decision Number 91/PUU-XVIII/2021 concerning the formal test of Law Number 11 of 2020 concerning Job Creation. The new content material regulated in this law is related to the Omnibus method and meaningful community participation. (Sihombing & Hsb, 2024)

From the explanation above, it appears that the politics of legislation has actually been mentioned in the 1945 Constitution of the Republic of Indonesia but with limited discussion. It is only then that the politics of legislation in detail is normalized in the form of the Law on the Formation of Legislation. Although the politics of legislation has been accommodated in the national legal system, its existence still leaves residual problems

3.3 The Problems of Political Legislation

3.3.a Weak Position

The political norming of legislation, which is predominantly normed in the form of laws, makes its position less strongly legitimized. This is considered relevant considering the nature of the law itself is a norm that is not as rigid as the Constitution so that it is often easily changed according to political interests. That is what has an impact on the lack of strong political position of the current legislation. When a draft law turns out to be incompatible with the

politics of existing legislation, it is not the draft law that is adjusted to the politics of legislation, but the regulation of the politics of legislation that is actually changed.

Of course, it is still very much remembered how the enactment of provisions regarding copyright work (CIPTAKER Act) where at that time there were no provisions regarding the formation process based on the omnibus law method, but the Government has used the omnibus law method in forming the law. (Sihotang et al., 2024) Instead of adjusting the Job Creation Law to keep it in line with the political corridors of legislation, on the contrary, lawmakers changed Law 15/19 and added the omnibus method in law drafting techniques. This is one example of how the political position of legislation in Indonesia is currently lacking. If left unchecked, the law-making mechanism will continue to be based on the will and authority of the power holders in Indonesia. (Dolok & Wisnaeni, n.d.) The politics of legislation will be increasingly sidelined.

In the end, it boils down to the absolute authority of the legislator in drafting existing laws. However, Lord Action's argument about absolute power being the cause of arbitrariness remains relevant throughout the ages.

3.3.b The Problematic Substance of the Formation of Legislation

As explained earlier, the politics of legislation exists at two different norm levels. In the level of law norms, the politics of legislation is regulated in detail in the Law on the Formation of Laws and Regulations. As one part of the norms regarding the politics of legislation, the Law on the Formation of Laws and Regulations must contain good and appropriate substance and material because it will have significant implications for the direction of national regulation in the future. (Akmal, 2021) However, the current Law on the Formation of Legislation contains several problematic provisions. One of them is regarding the content material of the law. (Sadiawati et al., 2019)

Originally, the first Law on the Formation of Legislation, Law No. 10 of 2004, regulated the type of content material into two categories, namely further regulation of the 1945 Constitution and regulation ordered by law. The expansion of the material then occurred in the revision of the Law on the Formation of Legislation through Law No. 12 of 2011 by adding three new materials, namely the ratification of international agreements, follow-up to Constitutional Court decisions, and fulfillment of legal needs in society.

Tabel 3. Perbedaan Materi Muatan Undang-Undang

Law Number 10 of 2004	Law Number 12 of 2011
<p>Article 8 Content material that must be regulated by law contains matters that :</p> <ol style="list-style-type: none"> a. further regulate the provisions of the Constitution of the Republic of Indonesia Year 1945 which include : <ol style="list-style-type: none"> 1. human rights; 2. rights and obligations of citizens; 3. the implementation and enforcement of state sovereignty and the division of state power; 4. state territory and regional division ; 	<p>Article 10 (1) The content material that must be regulated by law contains:</p> <ol style="list-style-type: none"> a. further regulation of the provisions of the Constitution of the Republic of Indonesia Year 1945; b. the order of a law to be regulated by law; c. ratification of certain international agreements ; d. follow-up on the decision of the Constitutional Court; and/or e. fulfillment of legal needs in society.

<p>5. citizenship and population; 6. state finance;</p>	<p>(2) Follow-up to the decision of the Constitutional Court as referred to in paragraph (1) letter d shall be carried out by the DPR or the President.</p>
<p>b. commanded by a law to be regulated by law.</p>	

Problems arise after the expansion of the content material in the Law on the Formation of Legislation. For example, regarding the meaning of the phrase “further regulate the provisions of the 1945 Constitution of the Republic of Indonesia”, Law 10/04 clearly regulates the scope of the phrase into 6 main clusters, while Law 12/11 does not define it clearly, even in the appendix to the explanation of the law. In fact, the mention of six clusters in Law 10/04 aims to emphasize what are the main things in the 1945 Constitution that must be manifested in the format of laws, as well as what is not necessary. Given the nature of formal gesetz is a direct derivative of the basic rules of the state (staatsgrundgesetz).(Sadiawati et al., 2019)

In addition, the addition of the clause “fulfillment of the legal needs of the community” as a new type of content material in Law 12/11 also creates a very broad interpretation because it is not accompanied by concrete limitations and explanations. This creates a paradigm for lawmakers to regulate all aspects of community life in the form of laws and perceive themselves as an effort to fulfill the legal needs of the community. In fact, according to Jimly Asshidique, the law is a limited means of legal fulfillment in the context of organizing state activities in general, so it is not comprehensive to all lines.(Asshidique, 2010) The determination of “fulfillment of legal needs in society” as the content material of the law is very inappropriate, and even according to Maria Farida will damage the existing legislative system in Indonesia because of the freedom to include all matters including content material from lower legislation to be formulated in the form of laws.(Farida Indrati, 2020) This will also have an impact on the inconsistency between the nature of the law and the type of content material. A law is actually a formall gesetz (formal rule). Formall gesetz is a type of norm that is more concrete and detailed than statsgrundgesetz.(Farida Indrati, 2020) However, the formal nature of gesetz is to regulate general material, not to regulate specific matters because more specific regulations are at a lower level (subordinate legislations). In the theory of the level of norms, the high and low degree of the type of legislation will determine the more general or specific the content material. The higher the type of legislation, the more abstract the material it regulates, and vice versa. It is inappropriate and inappropriate to include the content material of other types of regulations into the law, and the content material of the law into other types of regulations.

Some of these explanations explain the reality of how the current politics of legislation is still full of loopholes.

3. 4 Australia Country Comparison

Australia is one of the countries with clear legislative political arrangements. So it is very relevant when it becomes a model for Indonesia. In Article 51 of the Australian Constitution, there are arrangements regarding what matters may be regulated by the Federal Parliament. Starting from the

opening clause that Parliament is subject to the constitution to make laws in the framework of peace, order and good governance.

"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth..."

These opening clauses are important to determine whether a law is made in accordance with the corridors and contains elements of peace, order, and good government. (Prasetyo, 2024)

Article 51 of the Australian Constitution also authorizes the Commonwealth (federal) Parliament to make laws in relation to a number of areas referred to as "heads of power". There are 39 points of coverage of these areas. These include foreign affairs, defense, international and interstate trade, taxation, immigration, and company management.

However, the powers of the federal parliament are not absolute but limited. Each state retains the right to make laws outside of these areas or if there is no conflict with federal laws. Where there is a conflict between a state law and a federal law on the same matter, then in accordance with Section 109 of the Australian Constitution, the federal law will take precedence and the conflicting part of the state law will be deemed void.

"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid".

These articles are a form of power-sharing system. Whereas, the federal government can only regulate matters listed in Article 51, the states have more freedom in making laws beyond the federal authority.

The application of political legislation as in Australia can actually also be manifested in the Indonesian national legal system. This will further strengthen the existence of political legislation.

4. Conclusion

The direction and material of a law are determined through the politics of legislation, so the existence of good and appropriate political legislation with strong legitimacy is a necessity. Political legislation in Indonesia today has indeed been constructed in detail but still has fundamental problems that require reconceptualization.

As an endeavor to conceptualize good and appropriate political legislation so that its existence is clear and not unclear in the national legal system. The author recommends to clearly and concretely regulate the politics of legislation, especially regarding the direction, limits and content material of a law into the constitution (1945 Constitution of the Republic of Indonesia), as successfully practiced by Australia by including the politics of its legislation in the State Constitution. This is a preventive effort so that the law has a clear barometer in its drafting and minimizes the drafting of laws to accommodate the interests of certain parties.

However, the author also realizes that if the politics of legislation is comprehensively and concretely regulated in the basic norms of the 1945 Constitution of the Republic of Indonesia, it will greatly affect the progressiveness of the science of legislation, considering that the nature of the basic norms is rigid. Therefore, it is necessary to conduct a more in-depth study of what parts of the politics of legislation need to be normed in the

Constitution, as well as those that are sufficiently formalized in the form of Laws.

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