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Dynamics of Formil Legal Procedures Establishment of Laws and Regulations

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Abstract

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As a state of law, Indonesia certainly cannot be separated from legal policies in terms of drafting laws and regulations. The definition of legal policy is legal policy as a means and procedure that can be used by the government to build a legal system. Based on this, a problem formulation is drawn, namely about how the political pattern of legislation in the Job Creation Law and how the development and participation of the community in making the Job Creation Law. The research method used is normative research, and the approach used is a statutory and conceptual approach. The result of the discussion is that the political pattern determines the purpose of what will be compiled in laws and regulations. In Indonesia, its formation must be based on Pancasila where Pancasila is the fundamental norm of the state. The development of an increasingly critical and wise society must certainly receive attention in order to be involved in the formation of laws and regulations. Community involvement here aims to later the rules formed can be useful for the community.



A. Introduction

Legislation is a subsystem of the legal system. Therefore, legal policy debate is intrinsically inseparable from legal policy debate. The term legal policy or legal policy is based on the principle that the law and / or legal provisions are basically the design or design of a political body.¹ One of the mechanisms for forming laws and procedures is the legal policy desired by the government at that time. Therefore, the mechanism for the formation of laws and regulations in Indonesia today is based on the will and authority of the ruler. Legal policy can be described as the will or will of the state towards the law. That is, what the method is made for, for what purpose it is made, and where it is headed.²

M. Mahfud MD claims that legal policy includes: First, legal development. At its core is the creation and updating of legal materials to meet needs. Second, the implementation of existing laws, such as affirmation of the role of institutions and guidance of law enforcement agencies.³ As a state of law, Indonesia certainly cannot be separated from legal policies in terms of drafting laws and regulations. According to Mahfud MD, Legal Policy, is the official state policy on law, both those enacted to achieve state goals (both new rules are made and old rules are abolished).⁴

Another form of legal policy, namely the means or means and measures that the ruler can use to create the desired national legal system and realize Indonesia's national ideals in the national legal system.⁵ Article 1 Paragraph 1 of the Constitution of the Republic of Indonesia Year 1945 states that "*Indonesia is a state of law*". The concept of the rule of law in Indonesia is based on the European tradition of continental *law (civil law)* and prioritizes written law in legal form as the basis for the activities of all countries.⁶

The concept of the rule of law aspired by the founding father from the beginning of the struggle for independence can be seen by the basic points of thought in the preamble to the 1945 Constitution, namely independence, justice, humanity and the statement where the government is obliged to protect the entire nation and all Indonesian bloodshed and promote general welfare. Thus it can provide direction and hope that the law as a protector of all people and individuals from unjust and arbitrary acts. Law becomes a tool that can protect every citizen in a nation so that his rights as humans are guaranteed.⁷

To realize laws that protect people, fair treatment, laws that protect all citizens so that their rights are guaranteed, it is necessary to have regulations as the basis for the formation of laws and regulations. provisions from initial formulation until the regulations are ratified and implemented. With the standard rules, every preparation is carried out in a way and method that is in accordance with the standards that bind all authorized bodies so that in the end it can meet the needs of the community with appropriate and good laws and regulations.⁸

¹ H M Laica Marzuki, "Kekuatan Mengikat Putusan Mahkamah Konstitusi Terhadap Undang-Undang," *Jurnal Legislasi* 3, no. 1 (2006): 2.

² Yoyon M Dariusman Wahyudin and Bambang Wiyono, "Politik Hukum Dalam Pembentukan Peraturan Perundang-undangan Ditinjau Dari Undang-Undang No 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang No 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Lex Specialis* 9, no. 2 (2020): 279–90.

³ M. Mahfud MD, *Politik Hukum Di Indonesia Cet. II* (Jakarta: LP3ES, 2001) hal. 23.

⁴ M. Mahfud MD, hal. 25.

⁵ Sunaryati Hartono, "Politik Hukum Menuju Satu Sistem Hukum Nasional," 2020, hal. 37.

⁶ Kerjasama antara Direktorat Jenderal Peraturan Perundang-undangan dengan Japan International Cooperation Agency, *Buku Tanya Jawab Seputar Pembentukan Peraturan Perundang-Undangan Di Tingkat Pusat* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, n.d.).

⁷ Andi Mattalatta, "Politik Hukum Perundang-Undangan," *Jurnal Legislasi Indonesia* 6, no. 4 (2018): 571–84.

⁸ Sopiani Sopiani and Zainal Mubaraq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 146–53.

This research uses normative juridical methods that focus on literature analysis or literature study as the main data source. Approaches to relevant laws and regulations, principles, rules, and legal doctrines will be used in this study to construct solid arguments. Data will be collected through legal reading materials from literature sources related to the problem under study, and then will be analyzed qualitatively. The purpose of this study is to produce strong arguments based on credible legal foundations.

In an effort to maintain authenticity and provide new developments to this research, the author has conducted research in advance on a similar theme. First, a research conducted by Munawar, Marzuki and Ibnu Affan entitled "*Analysis in the Process of Forming the Job Creation Law Perspective of Law Number 12 of 2011 concerning the Formation of Laws and Regulations*". In the study, it was found that the impact of the implementation of Law Number 11 of 2020 concerning Job Creation on the applicable legal system in Indonesia has weaknesses in terms of procedural because in the process the public is not given information about the standard and official text related to the Law, and is not directly involved in its discussion and ratification. This is contrary to the constitutional rights as citizens stipulated in the NRI Constitution of 1945.⁹ Second, a research conducted by Rahendro Jati, entitled "*Community Participation in the Process of Responsive Law Formation*". The results of this study state that formally, the process for creating responsive laws has been possible. However, the acceptance of people's aspirations in substance by the framers of the law to realize responsive laws is strongly influenced by the attitudes and views of the framers of the law, which includes various interests in it. Therefore, it is important for the public and the framers of the law to be aware of the interaction that takes place between the two during the process of forming the law.¹⁰ Third, research conducted by Irham Ramur, entitled "*Analysis of Public Participation in the Formation of Laws and Regulations According to Constitutional Court Decision Number 91/PUU-XVIII/2020*". The results of this study indicate that although regulations related to law formation have been optimally designed to produce responsive legal products, the reality is that law framers often ignore formal procedures in the formation process. Therefore, stronger regulatory affirmation is needed to ensure the fulfillment of formal aspects in the legislative process, especially related to the right of public participation in the process. Meaningful community involvement in the formation of laws must pay attention to at least three rights, namely the right to be heard, the right to be considered, and the right to get responses to proposals submitted. The fulfillment of these rights must take place through two-way communication between the public and the framers of the law in good faith, with a view to achieving responsive legal outcomes. Therefore, the formal principle must be carried out with its true meaning and not just as a formality to legitimize the law.¹¹

This research has a novelty, which is to know the political pattern of law formation and community participation in the formation of legislation. Related to the background above, this paper will discuss and deepen the dynamics of formal legal procedures for the formation of laws and regulations. The author will discuss (1) the political pattern of legislation in the Job Creation Law and (2) The development and participation of the community in making the Job Creation Law.

⁹ Munawar, Marzuki, and Ibnu Affan, "Analisis Dalam Proses Pembentukan Undang-Undang Cipta Kerja Perspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Ilmiah METADATA* 3, no. 2 (2021): 452–68.

¹⁰ Rahendro Jati, "Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang Yang Responsif," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 329–42.

¹¹ IRHAM RAMUR, "Analisis Partisipasi Publik Dalam Pembentukan Peraturan Perundang-Undangan Menurut Putusan Mahkamah Konstitusi Nomor 91/Puuxviii/2020," 2023, hal. 17.

B. Discussion

1. Political Patterns of Legislation in the Job Creation Law

a. Initial Views on the Formation of Laws and Regulations

In Great Dictionary Indonesian (*Kamus Besar Bahasa Indonesia*), the word "orientation" is defined as an opinion that underlies an idea, concern, or tendency. Therefore, the direction of legal sentence formation can be interpreted as the tendency of the formation of laws and regulations in Indonesia. Thus, on the other hand, laws are also products of political institutions, therefore the discussion of the direction of legal formation cannot separate legal policy from the political configuration of a particular period or mode.

Judging from its history, the formation of laws is divided into three periods, namely: the old order period, the new order period, and the reform period. With the following classification:¹²

- 1) The Old Order period (During the regime of President Soekarno. Period from 1945-1966)
- 2) The New Order period (During the regime of President Soeharto. Term from 1966-1998)
- 3) Reformation Period (After the abdication of President Suharto in 1998. Term from 1998-present)

An overview of the political development of laws and regulations in force at a certain time can be seen from:

- 1) The product of legislation formed at that time, is convenient and its specificity is often described in a general review and explanation (if any) of the legislation established; and
- 2) The policies formed by the government/state at that time were the main lines in guiding the formation of laws, such as GBHN in the New Order regime or Prolegnas and the Medium-Term National Development Plan in force at that time.

Thus, in its development, the formation of laws and regulations in Indonesia shows a shift in focus from autonomy during the old order to repression in the new order period and back to autonomy. The authoritarian political system when the New Order became democratic during the reform period seemed to have no legal form and the rule of law in Indonesia changed to responsive, but still returned to autonomy as in the Old Order period.¹³

b) The Role of Pancasila in the Formation of Laws and Regulations

To explore the role of Pancasila, Hans Kelsen's theory will be taken, which is a fundamental theory of the theory of legal hierarchy. This theory argues that lower rules come from higher rules and higher rules come and go from rules above them, continuing until they meet rules called ground rules. These basic rules are the basis of the entire legal system.

In general, Hans Kelsen offers three levels of law, namely: basic rules, general rules, and specific rules. Then this theory developed into 4 groups, namely:

- 1) Fundamental Norms of the State
- 2) Basic Rules of the Country
- 3) Formal Legislation
- 4) Implementing Rules and Autonomous Rules¹⁴

¹² Moh Mahfud, "Membangun Politik Hukum, Menegakkan Konstitusi," 2020, hal. 45.

¹³ endang Sutrisno, "Mengukuhkan Paradigma Hukum Di Era Orde Reformasi," "*Syariah*" *Jurnal Ilmiah Fakultas Hukum Universitas Swadaya Gunung Jati* 1, no. 1 (2018): 1-12.

¹⁴ N E Simmonds, "General Theory of Norms. By Hans Kelsen. Translated by Michael Hartney.[Oxford: Clarendon Press. 1991. Lx, 429,(References) 10,(Appendix) 15 and (Index) 11 Pp. Hardback£ 55. 00 Net.]-Introduction to the Problems of Legal Theory. By Hans Kelsen. Translated," *The Cambridge Law Journal* 51, no. 3 (1992): 542-45.

The application of the above theory in the hierarchy of laws and regulations in Indonesia can simply be described as follows:

- 1) State Fundamental Norms = Pancasila
- 2) Basic Rules of the State = Constitution of 1945
- 3) Formal Act = Act
- 4) Implementing Rules and Autonomous Rules = Government Regulations and Local Regulations.

Thus, based on Hans Kelsen's theory above, it can be said that the position of Pancasila in the level or hierarchy of laws and regulations in force in Indonesia is the highest rule and source of philosophy and thought.

c) The Use of Pancasila Ideology in the Formation of the Job Creation Law

In short, ideology can be defined into an idea and ideal that will and must be achieved, therefore, it becomes the basis of views or understandings in the formation of laws. Ideology can be analogous to a system or way of thinking that is carried out when there are problems or public constraints, so that it becomes the main and core of political development in a country. If we look back, namely the noble values of the Indonesian nation, which are contained in the main values of Pancasila, then it can be said that the ideology applied in Indonesia is not the ideology of foreign nations that are identical to capitalists and individualists who prioritize individual rights.¹⁵

The important point in the ideology of Pancasila is more about common rights that do not forget individual rights. Therefore, the existence of Pancasila ideology is in the middle of 2 major ideologies, namely individualist capitalists who lean towards Europeans and socialists who lead to Eastern Nations.¹⁶ As a result of the adoption of the Pancasila Ideology in Indonesia, all regulations produced were made to realize national goals, based on kinship and existing legal political conditions that participated in harmonizing it, which all originated from the main values of Pancasila and the 1945 Constitution.¹⁷

The implementation of the above, where Pancasila is the basis for the formation of laws can be seen in the Job Creation Law. This law uses the concept of *Omnibus Law*, where goals and values must be in accordance with the principles of God, Humanity, Unity, Peoplehood and Social Justice.¹⁸ In the concept of Omnibus Law, it is known as the "*sweep the universe*" legal system.¹⁹ This is expected to be a solution to the situation and regulatory conditions in Indonesia, some of which still overlap.

The tradition of making laws in Indonesia has so far applied from the *Civil Law* system (Continental Europe), but *the Omnibus Law* is taken from the *Common Law* system.²⁰ Therefore, there is a strong relationship in rank or hierarchy to Pancasila as an ideology and the 1945 NRI Constitution. Which, the stages of law formation in Indonesia are bound by Law No.12 of 2011 concerning the Establishment of Laws and Regulations. Indonesia as a state of law with the ideology of Pancasila has the same elements and bases as the state of law such as

¹⁵ Rizal Al Hamid, "Reinterpretation Of Understanding Pancasila And The Value Of Diversity Post-Reform Era: Reinterpretasi Pemahaman Pancasila Dan Nilai-Nilai Kebhinekaan Pasca Reformasi," *Empirisma: Jurnal Pemikiran Dan Kebudayaan Islam* 31, no. 1 (2022): 16–29.

¹⁶ Wildan Nasrulloh, "Analisis Yuridis Materi Muatan Rancangan Undang-Undang Haluan Ideologi Pancasila Keterkaitannya Dengan Sila-Sila Pancasila" (Universitas Islam Sultan Agung Semarang, 2022).

¹⁷ Bagir Manan, "Pelaksanaan Demokrasi Pancasila Dalam Pembangunan Jangka Panjang II," in *Lokakarya Pancasila Universitas Padjajaran Bandung*, 1994, hal. 2.

¹⁸ Adithya Tri Firmansyah, Ema Sarila Sinaga, and Fenia Aurully Aisyah, "Hilangnya Sendi Demokrasi Dan Otonomi Daerah Melalui Korporatokrasi RUU Omnibus Law," *Widya Yuridika: Jurnal Hukum* 3, no. 2 (2020): 131–40.

¹⁹ Firman Adi Candra, "Kritisi Omnibus Law Dalam Perspektif Toleran Dalam Khilafiyah," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 1, no. 1 (2021): 70–113.

²⁰ Restu Gusti Monitarsi, Eki Furqon, and Enis Khaerunnisa, "Implikasi Penerapan Metode Omnibus Law Dalam Sistem Pembentukan Perundang-Undangan Indonesia Ditinjau Dari Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Dialektika Hukum* 3, no. 1 (2021): 21–44.

the *rule of law*.²¹ Although in a legal state with ideology, Pancasila has specific elements that make it different from other legal states. The difference can be seen from the value of God Almighty, which does not separate the state from religion, the value of social justice, kinship, cooperation, and mutual assistance, all of which are based on the integrity of the unitary state of Indonesia.

Therefore, the nature of the *Omnibus Law* must be in line with the nature of protecting rather than arbitrary rule. The nature of protecting in question is to protect the Indonesian nation from bloodshed that is based on unity, so that in realizing unity, there is an idea that becomes a reference for unity, namely the creation of social justice for all Indonesian people. This Job Creation Law must be able to display the nature of the law that is responsive to the level of social needs that exist and are real in society. Responsiveness means serving the various needs and social interests experienced by the people. Responsive law will cause a shift in emphasis from rules to legal principles and objectives that prioritize citizenship as a goal and also a way to realize it.²²

The responsive law that is the hope in the Job Creation Law is the legitimacy of substantive justice that follows the principle of Pancasila ideology, which in depth in the concept of *Omnibus Law* no longer lies in a rigid way of thinking in the *Civil Law* legal system. As a result, in finding the value of justice in this legislation, you must be able to think beyond the rule and get substantive justice.

d) Ideological Turmoil in the Formation of the Job Creation Law

Reflecting on every incident in Indonesia, this turmoil is due to the different interests of each party forming laws and regulations, namely the House of Representatives (*Dewan Perwakilan Rakyat*) (hereinafter referred to as DPR). Members of the House of Representatives consist of councillors who are representatives of political parties. In Indonesia alone there are 9 political parties that can become factions and their representatives can occupy legislative seats in the DPR. Definition A faction is a collection of councillors or groups in the legislature or parliament consisting of a number of members who agree and share the same views.²³ The purpose of the existence of this faction is to equalize the interests of heterogeneous or diverse DPR members, it is necessary to form factions or groups of DPR members who have the same and unidirectional political views. This allows DPR members to exercise their full functions and powers, with each DPR member required to be a member of one of the factions.

Every time the bill is discussed, each faction will give a written response about the bill that will be discussed. The view contains important points and matters that are the main subject of discussion in the bill in question. The written response is called the Faction View. Each Faction's View will see discussions and studies that are ideological in nature in accordance with the characteristics and characteristics of the party whose representative sits in the DPR seat. It is from here that one of the wars and ideologies between parties can intersect in a healthy way through documented administration. Ideological competition during the discussion of making laws and regulations can be seen from the sessions discussing bills in commissions or other council equipment within the DPR.

If we look at the reality, that the orientation of the formation of the current law has some defects or deviations from the legal ideals and state ideals contained in the ideology of Pancasila as the highest hierarchy and becomes the philosophy as well as the basic law of the Republic of Indonesia. For example, in the economic field, there are several formulations of articles and

²¹ Widiatama Widiatama, Hadi Mahmud, and Suparwi Suparwi, "Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia," *Jurnal USM Law Review* 3, no. 2 (2020): 310–27.

²² Sulaiman Sulaiman, "Hukum Responsif: Hukum Sebagai Institusi Sosial Melayani Kebutuhan Sosial Dalam Masa Transisi (Responsive Law: Law as a Social Institutions to Service of Social Need in Transition)," *Jurnal Hukum Samudera Keadilan* 9, no. 2 (2014): 199–205.

²³ Solly Lubis, *Politics and Law in the Reformation Era* (Bandung: CV. Mandar Maju Publishers, 2000), hal. 53.

regulations that seem capitalist and liberalist, when compared to economic democracy and popular economy.²⁴

e. Obstacles and Conflicts in the Formation of the Job Creation Law

1) Quality of Laws and Regulations

We can see that the quality of laws in Indonesia is very low, this can be seen from the overlap between regulations, asynchronous regulations, and disharmony between laws and regulations.²⁵ An example that demonstrates the above is the result of a study conducted by a team of experts from the State Ministry of Environment in March 2009. Shows that there are 12 laws and regulations in the field of natural resources that are not synchronized²⁶ and overlap with each other.

2) Quantity of Formation of Laws and Regulations

To show the poor quantity of legislation, the barometer that can be made is that in 2011 the DPR passed 12 laws out of 70 targeted bills. One year later in 2012, the bills passed into law amounted to 10 out of 64 bills that had been targeted at the beginning. In 2013 the number rose to 12 laws passed. In 2014 there were 17 laws passed out of 69 bills. The distance from the results of the law from the targeted one has an impact on the legal vacuum for the community who need certainty in regulating matters related to life in society.²⁷

3) Integration in the Job Creation Law (UU Cipta Kerja)

In this Job Creation Law, ideological turmoil can be seen when there is trade competition between the United States and China, where America adheres to Liberal ideology and China with its communist ideology. This has led many foreign investors to want to move manufacturing out of China. But Indonesia is not the main destination for foreign investors in investing their capital, unlike Taiwan and Vietnam. This is due to the difficulty and rigidity of regulations in Indonesia, in addition to the overlap of various existing policies.²⁸ Disharmony between regulations is the cause of this Job Creation Law.

The next debate is whether the concept of *the Omnibus Law* will be appropriate if implemented in Indonesia? As we know, Indonesia adheres to *Civil Law*, while the Omnibus Law Concept is sourced from *Common Law*. *The Omnibus Law* comes from a state style that some people consider unsuitable to be applied clearly in the legal system in Indonesia. This very prominent difference in characteristics is the cause. For some experts, there is the principle of *civil law* as a complement so it is not at all suitable to be applied. There are many debates and frictions in the thoughts of experts in the formation of this Job Creation Law with the *Omnibus Law Concept*, but the preparation of laws is the result and product of politics between the government and the DPR. Regardless of the pros and cons, when talking about the formation of laws, it certainly concerns the process of national law development in creating national goals.

The obstacles and conflicts that exist are where Indonesian law still ignores national legal guidance and has not been optimally responsive and responsive to increasingly complex practices. Therefore, the new law must always be in harmony with the real level of need in society and must not be rigid and must be comprehensif.

2. The level of development of the global influence society in the formation of laws

a) Community Development in the Formation of the Job Creation Law

²⁴ Pataniari Siahaan, *Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945* (Konstitusi Press, 2012), hal. 33.

²⁵ Muhammad Irham Roihan, "Omnibus Law Ditinjau Dari Perspektif Sistem Perundang-Undangan Di Indonesia (Studi Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja)," 2021.

²⁶ Revisond Baswir, "People's Economy vs. Neoliberalism," *Echoes of Justice* 2, no. 1 (2015): 8–17.

²⁷ Achamad Ali, "Keterpurukan Hukum Di Indonesia (Penyebab Dan Solusinya)," 2005, hal. 29.

²⁸ R A S Hernawati and Joko Trio Suroso, "Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law," *Jurnal Ilmiah Manajemen, Ekonomi, & Akuntansi (MEA)* 4, no. 1 (2020): 392–408.

Changes in social values or basic rules require changes in laws to always adapt to society.²⁹ Legal problems adapt to changes in society, especially legislation or legislation in a broad sense.³⁰ This is related to the weak laws and regulations that have a static and rigid nature.

In his opinion, M. Solly Lubis stated that the formation of law from a democratic perspective requires that the input considered in determining the law comes from the wishes of the community/people, including various interests in their lives. The wishes of such citizens are conveyed by legislators where they have the expertise to respond to and observe the wishes of the people they represent. After that the will of the people will be incorporated into the legislature which will then become a product of law derived from the will of the people.³¹

With what has been described above, the framers of the law are required to have the ability in the process of forming laws, such as the ability to communicate with the public, openness, vocal ability to convey people's aspirations in the legislative forum, the ability to formulate laws, and the ability to master basic knowledge, experience, strategy analysis, strategic plans, monitoring, politics, forecasting, to control and deterrence.

The formulation of laws will adjust to the socio-political structure of each country. Just as a country adheres to an autocratic political structure, the formation of laws in the country will also give rise to autocratic characteristics as well.³² At the same time, if you put the process of forming laws and regulations in a country with a democratic socio-political structure, it will be more concentrated on different social values and interests. This is because the socio-political structure of democracy provides space for the community to participate even though and actions that are state in nature and also there must be no discrimination that occurs against a group in society.³³

One of the general objectives of the formation of laws is to protect the interests and rights of the community. However, in its enforcement, it often experiences obstacles and problems because the activities and interests of the community are very broad so that the law sometimes does not regulate it completely and firmly. Every human being certainly has limited abilities and expertise, including the framers of laws so that the laws they make are not perfect and complete that can cover all activities and interests of society. So that there is no law that can explain clearly and is felt to be as complete as possible.³⁴

Laws and regulations are created because of the complexity and many dynamics that exist in society. The purpose of this right is that the presence of law exists because the target is the community itself and must accept the presence of the law.³⁵ Laws passed unilaterally by lawmakers can be rejected because they do not conform to the meaning of social justice.³⁶ This is the importance of community involvement in the legislative process. Participatory democracy should provide greater assurance for responsive implementation of legal products as citizens participate in lawmaking.³⁷ With the participation of the community in the law-making process, it will also create a responsive government because the community is involved in the formation of legal products and the citizens themselves will be responsible in the community.³⁸

²⁹ Mushafi Mushafi, Ismail Marzuki, and others, "Persinggungan Hukum Dengan Masyarakat Dalam Kajian Sosiologi Hukum," *Jurnal Cakrawala Hukum* 9, no. 1 (2018): 50–58.

³⁰ Munawar, Marzuki, and Affan, "Analisis Dalam Proses Pembentukan Undang-Undang Cipta Kerja Perpspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan."

³¹ Lubis, *politics and law in the reform era*, hal. 57.

³² Abdus Salam, "Pengaruh Politik Dalam Pembentukan Hukum Di Indonesia," *Mazahib*, 2015, 119–31.

³³ Satjipto Rahardjo, *Law, Society, and Development* (Bandung: Alumni, 1980), hal. 76.

³⁴ Sudikno Mertokusumo, "Penemuan Hukum Sebuah Pengantar, Cetakan Kelima," *Liberty, Yogyakarta*, 2007, hal. 56.

³⁵ Ann Seidman, Robert B Seidman, and Nalin Abeyesekere, *Legislative Drafting for Democratic Social Change* (Kluwer Law International BV, 2001), hal. 27.

³⁶ Fauzi Iswari, "Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 127–40.

³⁷ Wimmy Haliim, "Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif," *Masyarakat Indonesia* 42, no. 1 (2016): 19–30.

³⁸ Samuel P. Huntington, *Partisipasi Politik Di Negara Berkembang, Cetakan Kedua* (Jakarta: Rineka Cipta, 1994), hal. 87.

Public decision making is the process of formulating legislation related to society, the state, and the life of the nation. The nature of these public decisions is binding and applicable to all societies in a country. The existence of public space is also very important in order to provide space for the community to participate in the formation of laws.³⁹

The making of laws and regulations is an absolute and unique form of state monopoly and cannot be transferred to organizations that are not state or government entities. Thus, in principle, there will be no deregulation and the establishment of legislation that allows privatization. However, in the process of its formation, non-state or government parties are likely to participate. This is based on the fact that laws and regulations, both directly and indirectly, always involve the public interest, so it is natural for the community to participate in the development process.⁴⁰

The type of participation in question can be in the form of providing opportunities with the community to take various steps to include suggestions with the aim of monitoring a matter, providing opportunities for the community to be able to evaluate and provide advice on various national or government policies, especially in the legislative field. Therefore, in practice, participation is carried out by scientific research, debate or discussion forums, or participation in groups to make laws.⁴¹

In the forum of the House of Representatives, means of participation are also provided through "opinion" organizations or "*public hearings*".⁴² This diverse form of participation will be more effective if applied within a broader framework not only of scientific or professional groups but of diverse interest groups or of society in general. For this reason, it is often necessary to socialize the draft laws and regulations so that the public can know the direction of policies or policies of laws and regulations to be implemented.⁴³ Thus the formulation and formation of laws and regulations can lead to the establishment of an Indonesian national legal system that can meet the legal expectations of the Indonesian people and work towards the creation of appropriate laws.⁴⁴ In this regard, Mahfud MD also believes that reactive law is a legal product born from an important legal development strategy and invites full participation from community groups so that the content of the law plays an important role and meets the expectations of the community in general.

From what has been described, it is necessary to develop laws and regulations that take into account the reflection and participation of social classes so that the legitimate products created can be distributed.⁴⁵ This understanding is important because it can avoid conflicts of understanding between the community and the government or state that will be entangled in actions carried out outside the channels or legal basis.⁴⁶ If the law is a sensitive law, there will be no strong law (which has the right) to defeat the weak or public perception will always be informed because the birth of the law must go through a process of interdependence. Basically,

³⁹ Saifudin, *Public Participation in the Formation of Laws and Regulations, First Print* (Yogyakarta: UII Press, 2009), hal. 64.

⁴⁰ Dadi Junaedi Iskandar, "Pentingnya Partisipasi Dan Peranan Kelembagaan Politik Dalam Proses Pembuatan Kebijakan Publik," *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu Dan Praktek Administrasi* 14, no. 1 (2017): 17–35.

⁴¹ Ronald Parlindungan, "Partisipasi Publik Dalam Proses Kebijakan Di Masa Reformasi," *Jurnal Trias Politika* 3, no. 1 (2019): 10–21.

⁴² King Faisal Sulaiman, "Model Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Menurut Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Perspektif Hukum*, 2017, 167–85.

⁴³ Mia Kusuma Fitriana, "Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara (Laws And Regulations In Indonesia As The Means Of Realizing The Country'S Goal)," *Jurnal Legislasi Indonesia* 12, no. 2 (2018): 1–27.

⁴⁴ Heriyono Tardjono, "Reorientasi Politik Hukum Pembentukan Undang-Undang Di Indonesia," *Jurnal Renaissance* 1, no. 2 (2016): 61–74.

⁴⁵ Winda Fitri and Luthfia Hidayah, "Problematika Terkait Undang-Undang Cipta Kerja Di Indonesia: Suatu Kajian Perspektif Pembentukan Perundang-Undangan," *Jurnal Komunitas Yustisia* 4, no. 2 (2021): 725–35.

⁴⁶ Andi Akbar Herman Andi Akbar Herman, "Implementation Of Public Participation In The Making Of Regional Regulations In North Kolaka Regency According To Act Of The Republic Of Indonesia No. 12/2011 Concerning The Making Of Legislation," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 2 (2021): 159–86.

people's acceptance and respect for the law is also determined by the values, beliefs, or socio-political systems that live in society.⁴⁷

In the history of the development of Indonesian legislation, the political system that developed in Indonesia was not democratic for more than 30 years before the 1998 reform, so that our laws have always been subordinate and therefore conservative, became distinctive laws and collapsed. The characteristics of conservative law are:

- 1) The production process is centralized (without participatory) because it is regulated by state institutions and not democratically formed by the state. Here the role of justice and the power of society is very small.
- 2) Its content is a positivist (not aspirational) instrument in the sense of reflecting the will of the ruler because from the beginning the law was used as an instrument, justification will be or (has) been carried out by the dominant holder of power.
- 3) The scope of the content is open-responsive (*non-responsive*) so that it is easily interpreted unilaterally and forced to be accepted by the state authorities.
- 4) Its implementation favors short-term industry policies and programs over the application of formal legal rules.
- 5) Its application prioritizes the protection of the body so that it is not uncommon for authorities to divert legal cases by mixing violations with procedural cases or by portraying scapegoats as perpetrators must be punished.

The product of conservative law becomes a legitimate product whose material reflects the vision in the socio-political class, the willingness of the government to implement national ideologies and goals. It is quite closed to requests from social groups and individuals. The role and multiplicity of participation in society in its creation is relatively weak. In contrast, adaptive legal outcomes are legal products that reflect justice and can meet societal expectations. In its formation, it gives a great role to society and all social groups and individuals. Results are tailored to the needs of social groups as well as individuals within the community.

The two things above agree with Mahfud MD about the characteristics that have been explained. In addition, Satya Arinanto argues that conservative legal products must have meaning. From the existing legal history, it is necessary to create a national legal political scenario to lead to an understanding in the concept of the national legal system which is actually prepared in the form of a bill.

From what has been described above, when it is related to the Job Creation Law, its formation is still experiencing a lot of controversy among the community. The framer of the law is considered to include the aspirations of the community in various tops in legal openness. The community feels that the law is not made for the needs of the people and is considered more detrimental to the community.⁴⁸ Most recently, this was also supported by the Constitutional Court Decision of the Republic of Indonesia Number 91 / PUU-XVIII / 2020 in which the Constitutional Court judge declared Law Number 11 of 2020 concerning Job Creation to be considered formally flawed and conditionally unconstitutional by determining several implications for the enactment of the law. The Constitutional Court judge considered that the process of its formation starting from discussion, mutual agreement, to ratification by the President had violated Article 20 paragraph (4) of the 1945 NRI Constitution and also violated the principles of the formation of laws and regulations stipulated in Law Number 12

⁴⁷ Dewa Gede Sudika Mangku and others, "Politik Hukum Pancasila Dalam Paradigma Nilai-Nilai Sosial Kultural Masyarakat Indonesia," *Pandecta Research Law Journal* 9, no. 1 (2014): 32–49.

⁴⁸ Santi Ayu Puteri, Aprillyna Ilym Akmalya, and others, "Analisa Yuridis Inkonsistensi Vertikal Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan" Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020," *Jurnal Education and Development* 10, no. 1 (2022): 30–36.

of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019.⁴⁹

b) Community Participation in Shaping Democratic Laws

Freedom of association and chatting, expressing and exchanging ideas in any form that can provide benefits, it is stated in the law based on the NRI Constitution of 1945 Article 28. With this, it has been guaranteed and protected the right for the community to express their thoughts, in any form and especially in the formation of laws.

The establishment of legislation discussed in Law No. 12 of 2011 concerning the guarantee of people who want to contribute and participate in the formation of laws, Article 96 of the Law explains as follows:

- (1) *In the Process of Forming Laws and Regulations, the community is given the right to provide input in any form.*
- (2) *Input input that has been listed and intended in paragraph (1) can be made through the implementation of: a. Public Hearing Meeting; b. Working Visits; c. Socialization; and/or Seminars, Workshops, and/or Discussions.*
- (3) *The community referred to in paragraph (1) refers to an individual person or group of persons who have an interest in the substance in the drafting of laws and regulations.*
- (4) *In making it easier for the public to provide input as stated in paragraph (1), every draft law must be easily accessible to the public.*

The public, both individually and collectively, who are outside public office, can participate or play a role in the formation of this law.⁵⁰ People who have power and are involved in political infrastructure that do not get representation in representative institutions are actors who can be categorized as Community Participation. Through the forum of legislation, they can provide control and good impact on various public decisions that will be issued.

The *Ante Legislative Stage*, the *Legislative Stage* and the *Post Legislative Stage* are three important stages in the Law Formation Process.⁵¹ Basically, in this stage, the community can provide input according to their wishes as a form of participation.⁵² Both as a whole process of forming laws and only in a few stages the community is given the freedom to choose the form of participation. However, although there are some things that have something in common, at each stage the form of community participation will be different. Therefore, there will be adjustments to the stages that are being carried out in the process of forming laws in participating communities. For example, community participation at each stage will be very different from one another.

C. Conclusion

Legal politics exerts influence in terms of the formation of laws and regulations. This legal politics is usually influenced by the ruler who is leading. The pattern of the formation of laws and regulations in essence has a noble goal in order to achieve the ideals of the nation and state. In its formation, the political pattern determines the purpose of what will be compiled in laws and regulations. In Indonesia itself, its formation must be based on Pancasila where Pancasila is the fundamental norm of the country. In addition, the ideas or ideals contained come from ideology which is the guideline for the nation's life. But on the other hand, in the formation of

⁴⁹ Dixon Sanjaya, Rasji Rasji, and others, "Penguujian Formil Undang-Undang Cipta Kerja Dalam Putusan Mahkamah Konstitusi Nomor 91/Puu-Xviii/2020," *Jurnal Hukum Adigama* 4, no. 2 (2021): 3255–79.

⁵⁰ Ramlan Surbakti, *Memahami Ilmu Politik* (Grasindo, 1992), hal. 59.

⁵¹ Jufrina Rizal, "Crimes Against Religion and Religious Life: A Review of the Sociology of Law," *Paper presented in "Public Debate on the Draft Criminal Code" of the Ministry of Justice and Human Rights Jakarta*, 2000, 21–22.

⁵² M Fiko Alvino and Siti Halilah, "Pembentukan Undang-Undang Dalam Rangka Pembaharuan Hukum Nasional Di Era Demokrasi," *Siyasah: Jurnal Hukum Tata Negara* 6, no. 1 (2023): 76–90.

laws and regulations there are many turmoil such as the different interests of the makers of laws and regulations. All goes back to the authorities at that time. Rulers can dominate so that their interests can be included in the laws and regulations made.

The development of law which is heavily influenced by politics, of course, also affects the rules of state life of the community. The community must indirectly obey the rules or laws and regulations formed by authorized institutions, which in their formation are not a little interspersed with the interests of the rulers. The development of an increasingly critical and wise society must certainly receive attention in order to be involved in the formation of laws and regulations. Community involvement here aims to later the rules formed can be useful for the community. Indonesia as a democratic country must involve the public in the formation of laws and regulations which have been mentioned in article 96 paragraph (1) of Law Number 12 of 2011. Community involvement can be done orally or in writing through hearings, discussions, socialization, and others. In addition, this community participation can be carried out at three times, namely before the formation of the law (*ante legislative*), at the time of the formation of the law (*legislative*), and *after the formation of the law* (*post legislative*).

D. Suggestion

We suggest to institutions forming laws and regulations or other rules that in the formation of rules must still be principled on the fundamental norms of the state, namely Pancasila and stick to ideology, and prioritize the public interest. This is certainly for the advancement of law and the welfare of the community in the life of the nation and state.

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