

## **Legal Politics and Dynamics of the Formation of Laws and Regulations Number 12 of 2011**

**Eri Siswanto, Ismaidar, Tamaulina Br. Sembiring**

### **Abstract**

Legal politics is one of the vital aspects in the stage of law formation because every law certainly cannot be separated from the influence of political negotiations that accompany it. The political guidelines of national law include the ideals of the nation, the goals of the state, the basis of the state, and efforts to protect the entire nation. This study comprehensively examines the Politics of Law and the Dynamics of the Formation of Laws and Regulations Number 12 of 2011 concerning the Formation of Laws and Regulations. The purpose of the research is to analyze the background, formation process, and legal and political implications of the law in the context of the legal system in Indonesia. The research method used is normative juridical with a statute approach and a conceptual approach. Primary data sources are obtained from official legal documents, discussion minutes, and academic manuscripts, while secondary data comes from legal literature, journals, and related scientific publications. The results of the study show that Law Number 12 of 2011 is a political and legal product that reflects systematic efforts to improve the procedures for the formation of laws and regulations in Indonesia. This law provides a more comprehensive legal basis for the legislation process, starting from planning, drafting, discussing, ratifying, and promulgating laws and regulations. The research reveals several important dynamics in the formation of the law, including philosophical, sociological, and juridical considerations behind the birth of the regulation.

**Keywords:** Legal Politics, Regulatory Formation, Law Number 12 of 2011, Legislation, Indonesian Legal System

Eri Siswanto

Law Science Study Program, University of Pembangunan Panca Budi, Indonesia

e-mail: [erisiswanto@yahoo.com](mailto:erisiswanto@yahoo.com)

Ismaidar, Tamaulina Br. Sembiring

Law Science Study Program, University of Pembangunan Panca Budi, Indonesia

e-mail: [ismaidar@dosen.pancabudi.ac.id](mailto:ismaidar@dosen.pancabudi.ac.id), [tamaulina@dosen.pancabudi.ac.id](mailto:tamaulina@dosen.pancabudi.ac.id)

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## Introduction

Legal politics as a policy of state administrators based on the values that apply in society to achieve the goals of the state that are aspired to (Suhariyanto, 2018). In the State of Indonesia, legal politics plays a very important and central role in the formation of laws and regulations. Emmanuel Kant argued that the goal of the state is to establish and maintain the law, which guarantees the legal standing of individuals in society and also means that every citizen has equal legal standing and should not be treated arbitrarily by the authorities (Huda, 2013).

One of the concrete manifestations of legal politics in Indonesia is the existence of Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Law Number 12 of 2011 is here to provide systematic guidelines in the legislation process, so that the resulting legal products can have better quality, legal certainty, and sustainability.

Along with the political dynamics and social changes that occur in Indonesia, the legal and regulatory system often experiences challenges both in terms of quality and implementation. Before the promulgation of Law No. 12 of 2011, the legislative process in Indonesia was often not well coordinated, so that many legal products were not harmonious or even overlapped with each other. This causes legal uncertainty and negatively impacts public trust in the country's legal system. Therefore, Law Number 12 of 2011 is an important instrument that is expected to be able to improve the legislation system through a more structured and transparent process (Harahap, 2015).

The formation of this law is also driven by the need for wider public participation in the legislative process. The legal politics embraced in Law No. 12 of 2011 prioritizes the principles of openness and public participation, where the public is given space to contribute to the process of drafting laws. Community involvement is highly expected to produce regulations that are more responsive to real needs in the field (Rahardjo, 2009). In addition, by introducing a clearer planning stage through Program Legislasi Nasional (Prolegnas), Law No. 12 of 2011 also helps ensure that the formation of laws is not temporary but based on careful planning and making (Asshiddiqie, 2012).

However, even though Law No. 12 of 2011 has regulated the legislation mechanism in detail, the implementation of the ideal legal policy still faces challenges. Among them are political pressures that often affect the direction of legal policies, and the lack of synergy between the legislative and executive institutions in formulating regulations. This shows that the application of legal politics is not only about the legal norms that are promulgated, but also how these norms are applied in practice (MD, 2010). Therefore, strong political commitment from all relevant parties is needed so that the goal of forming orderly, efficient, and participatory laws and regulations can be realized.

In the context of legal reform in Indonesia, legal politics through Law No. 12 of 2011 is also expected to be the foundation and system for sustainable improvement of legal quality. With a better legislation process, the resulting legal products will not only provide legal certainty, but also be able to encourage the creation of social justice (Indriati, 2018). Reform in the formation of laws is an important step towards a more transparent and accountable legal system, which can ultimately increase public trust in the government and legislative institutions.

Law Number 12 of 2011 concerning the Establishment of Laws and Regulations is an important legal foundation in the system of laws and regulations in Indonesia. This law regulates the procedures, procedures, and stages that must be passed in the formation of a law and regulation. The application of legal politics in this law aims to create a legal system that is orderly, transparent, and in accordance with the principles of the rule of law. In its formation, the formation of laws in Indonesia, which often involves many parties and interests, the existence of Law Number 12 of 2011 is an important foundation in an effort to maintain the consistency and quality of legal products.

### Research Methods

This study uses normative law research methods, which aim to examine various theoretical and normative aspects in the formation of these laws and regulations. The approaches used in this study include a statute *approach*, a *conceptual approach*, and a *historical approach*. The legislative approach is carried out to examine in depth the provisions regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations, including their changes and effects on the legislative process in Indonesia. The conceptual approach is used to analyze legal politics as a theoretical basis that influences the formation of legislative policies, as well as to understand the legal principles that are the normative foundation. The historical approach is used to trace the dynamics of the formation of this law, including the legislative process and the development of legal policies in the previous period.

The data used in this study are sourced from primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as Law Number 12 of 2011 and related legislative documents. Secondary legal materials are in the form of literature, scientific journals, and opinions of experts who discuss the topic of legal politics and the formation of laws and regulations. Tertiary legal materials are used to provide additional explanations, such as legal dictionaries and encyclopedias.

Data analysis is carried out using qualitative methods, namely deciphering, interpreting, and connecting various legal materials with relevant theories and legal political contexts behind their formation. This study also explores issues that arise in the implementation of Law Number 12 of 2011, including obstacles in its implementation and its impact on legal governance and democracy in Indonesia.

### Results

#### The Application of Legal Politics in Law Number 12 of 2011

The concept of the state of law aspired to by the founding fathers from the beginning of the independence struggle is very clearly seen from the inclusion of basic ideas in the preamble to the 1945 Constitution of the Republic of Indonesia, namely independence, justice, humanity and the statement that the state government is obliged to protect the entire nation and all of Indonesia's bloodshed and to promote general welfare. It provides guidance and hope that the law will protect everyone from unfair treatment and arbitrary actions (Febriani & Wasti, 2023).

Legal politics in the formation of laws and regulations aims to create regulations that are in accordance with the needs of the community and are able to face the challenges faced by the nation. Law No. 12 of 2011 supports legal politics oriented towards transparency and public participation through regulated stages such as systematic legislation planning and public participation in the law-making process. In legal politics, the formation of legislation must pay attention to the ideological moment, which will be lowered at the normative moment, then will interact with the political moment the results of dialectical interaction will be accommodated in the technical moment to become legislation (Suhariyanto, 2018).

The application of legal politics in the formation of laws faces challenges such as political intervention, differences of interest, and complexity in the preparation of legislation. In addition, the role of the executive and legislature is also often debated in determining the direction of legal policy. In this context, there is an overlap between one law and another, which creates sectoral egos and results in legal uncertainty in its application. For example, there are around 1,765 (one thousand seven hundred and sixty-five) regional regulations/regional head regulations that have been revoked or revised because they are contrary to the laws and regulations above them (Supriyadi, 2021).

Legal politics is a basic policy set by the government to direct the development of law in a country, reflecting the view of the norms to be regulated, including the process of legislation and its implementation. Law Number 12 of 2011 concerning the Establishment of Laws and Regulations is one of the manifestations of legal politics in Indonesia. This law was drafted to improve the procedures for forming laws in Indonesia, which were previously often colored by legal uncertainty, overlapping rules, and weak public participation. With the existence of Law No. 12 of 2011, the legislation process is regulated more systematically and structured, in line with the principles of legal politics that seek to realize certainty, justice, and openness in lawmaking.

One of the applications of legal politics in Law No. 12 of 2011 is to strengthen the aspect of legislative planning through Program Legislasi Nasional (Prolegnas). The legal politics contained in the Prolegnas show the government's commitment to plan the formation of laws in a more mature and *non-ad-hoc manner*. Through Prolegnas, the list of laws that will be discussed by the Dewan Perwakilan Rakyat (DPR) every year is determined based on national priorities. This is done so that the formation of laws is not only driven by short-term interests, but must be in accordance with the needs of the community and the direction of long-term development policies.

On the other hand, Law No. 12 of 2011 also applies the principles of openness and community participation, which are important elements in democratic legal politics. In this framework, the formation of laws and regulations must involve the community at the planning, drafting, and discussion stages. Through this mechanism, the aspirations of the community are accommodated, so that the resulting laws are more responsive to public needs. The legal politics carried out through openness encourages transparency in legislation and reduces the potential for abuse of power by law-making institutions.

The politics of law in Law No. 12 of 2011 also reflects efforts to ensure synchronization and harmonization between various laws and regulations. Prior to the enactment of this law, there was often an overlap between various regulations produced by various law-making institutions, both at the central and regional levels. Law No. 12 of 2011, through the important role of the Menteri Hukum dan Hak Asasi Manusia (Menkumham) and the harmonization mechanism between agencies, seeks to overcome this problem. This policy shows that the legal politics implemented aims to create a more orderly and coordinated legal system.

In addition, Law No. 12 of 2011 also prioritizes the application of the principle of legal certainty. The legal politics contained in this principle seeks to ensure that every regulation produced must be able to provide legal certainty for the community and the government in carrying out their duties. This legal certainty is very important so that the law can be a clear guide in social life, as well as prevent uncertainty that can cause injustice. Therefore, Law Number 12 of 2011 emphasizes that every regulation made must be prepared clearly, not multi-interpreted, and can be implemented effectively.

Law No. 12 of 2011 also emphasizes the importance of the principle of justice. The politics of law in the application of the principle of justice is reflected in the determination that every law and regulation must ensure equality before the law and must not be discriminatory. A fair law is a law that not only benefits certain groups, but also pays attention to the rights of all levels of society. In the formation of laws and regulations, this justice is realized through the involvement of various interested parties, so that legal products can reflect diverse needs and aspirations.

The application of political law in Law No. 12 of 2011 is also seen in the regulation of the supervision and testing mechanism of laws and regulations. This law gives authority to the Mahkamah Konsultasi (MK) and the Mahkamah Agung (MA) to examine laws and regulations

or *judicial review* that is suspected of being contrary to the constitution or higher regulations. The legal politics applied here functions as a control so that the regulations made remain in line with the principles of constitutionalism and the rule of law. This supervision is an important element in maintaining the quality of the resulting law, as well as ensuring that the law functions in the public interest, not for the interests of individuals or specific groups.

### **The Impact of Legal Politics on the Quality of Laws and Regulations in Indonesia**

Since the enactment of Law No. 12 of 2011, there have been various evaluations that show improvements in terms of legislation drafting procedures. However, there are also criticisms that state that some regulations are still overlapping or irrelevant to the times. Strong legal politics is expected to be able to improve the quality of legislation that is more responsive to the needs of the community.

Legal politics plays an important role in determining the quality of laws and regulations in Indonesia. As a basic policy that is the basis for legal development, legal politics affects the direction of law formation and implementation in various sectors. One of the main impacts of legal politics is on the aspect of legal certainty. With clear and directed legal policies, the resulting laws have clarity in substance, thus providing more definite guidance for the community and the government. This legal certainty allows the public to know clearly what their rights and obligations are, as well as reduce the gray space that can be exploited by irresponsible parties (MD, 2010).

From a political perspective, law is used as the result or output of a political process, or the formulation of public policies and the results of considerations. However, in addition to law being a product of political considerations, legal politics is also a guideline and policy basis in choosing which laws a country must implement. In a democratic country, considering that investment determined by law comes from the will of the community, it is the will of the community, the desire is inherited by the people's representatives, which is then handled and raised in the form of a law and regulation (Dolok & Wisnaeni, 2022).

In addition, legal politics plays a role in improving the quality of the substance of laws and regulations by ensuring that the regulations made are relevant to the needs of the community and developing socio-economic conditions. Good legal politics allow legislation to be responsive to changing times and societal needs. For example, in today's digital era, progressive legal politics will encourage the passage of laws regulating personal data protection or cybersecurity. Thus, adaptive legal politics helps maintain the relevance of law to technological developments and the needs of modern society.

Another significant impact of legal politics on the quality of laws and regulations is the assurance of consistency and harmonization of laws. Before the improvement of legal politics, many laws in Indonesia overlapped and contradicted each other, especially between regulations at the central and regional levels. Legal politics directed at harmonization of regulations reduces this fragmentation, so that the resulting laws are more coordinated and consistent with existing norms. This reduces the potential for conflict between government agencies and prevents confusion in the community about which regulations to comply with (Asshiddiqie, 2012).

Community participation is also an important element influenced by legal politics. Inclusive legal politics opens up space for the public to participate in the legislation process. With public involvement, the resulting laws are more representative and reflect the aspirations of the people. This involvement, in addition to strengthening the legitimacy of the law, also improves the quality of laws and regulations because the public can provide substantial input based on their experience and needs. This public participation encourages transparency and accountability in the legislation process, thereby improving the quality of the resulting laws.

However, legal politics can also have a negative impact on the quality of laws and regulations if used inappropriately. If legal politics is more dominated by the interests of certain elites or groups, the resulting laws can be a tool to protect their political or economic interests, and not the public interest. This can reduce the quality of the law, which ultimately has the potential to create social injustice and legal uncertainty. Therefore, it is important for legal politics to remain oriented to the public interest and based on the principles of social justice.

In addition, the weak implementation of legal politics can also affect the quality of laws and regulations. In Indonesia, there is often a gap between the laws that are made and their implementation on the ground. This shows that legal politics that only focus on the formation of laws without paying attention to effective implementation and supervision will result in regulations that do not have a real impact. For this reason, legal politics must include a holistic strategy, not only in the formation of laws, but also in their implementation so that the regulations made can really be implemented properly in society (Indrati, 2007).

The impact of legal politics is also seen in efforts to supervise laws and regulations. In a good legal political system, there is a strong supervision mechanism for the implementation of regulations. This can be done through judicial institutions, such as the Constitutional Court, which has the authority to test laws against the constitution. Legal politics that support the rule of law will strengthen the functioning of these institutions, so that any legal product that is contrary to the basic principles of the state can be nullified. Thus, the legal quality of the resulting laws and regulations continues to be maintained through strict and transparent supervision.

## Conclusion

Based on the description of the results of the previous discussion, the author draws the conclusion, that:

1. The application of political law in Law No. 12 of 2011 can be seen in the regulation of the supervision and testing mechanism of laws and regulations. This law gives authority to the Mahkamah Konsitusi (MK) and the Mahkamah Agung (MA) to examine laws and regulations or judicial review that is suspected of being contrary to the constitution or higher regulations. The legal politics applied here functions as a control so that the regulations made remain in line with the principles of constitutionalism and the rule of law. This supervision is an important element in maintaining the quality of the resulting law, as well as ensuring that the law functions in the public interest, not for the interests of individuals or specific groups.
2. Law Number 12 of 2011 is an important instrument in the Indonesian legal system, in which there is the application of legal politics which plays a major role in directing the process of forming laws and regulations. The legal politics implemented through this law aims to create quality, transparent, and fair regulations. However, the challenges in its implementation are still quite large, so continuous evaluation is needed to ensure that the implemented legal policies can improve the quality of law in Indonesia.

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