

**REFORM TYPES OF LEGISLATION REGULATIONS IN
INDONESIA**

**REFORMULASI JENIS PERATURAN PERUNDANG-UNDANGAN
DI INDONESIA**

Haryadi¹, Muhammad Syafei², Muhammad Rafi Darajati³

^{1,2,3} Faculty of Law, Universitas Tanjungpura

*Pontianak, Kalimantan Barat

*Email: muhammad.syafei@hukum.untan.ac.id

Volume 1, Number 2, September 2022

Received: July 14, 2022 Accepted: August 30, 2022 Online Published: September 30, 2022.

ABSTRACT

The arrangement of the types and hierarchies of statutory regulations has been confirmed in Article 7 paragraph (1) of Law Number 12 of 2011. In addition to the provisions of Article 7 paragraph (1), it is also regulated in Article 8 paragraph (1) of the types of laws and regulations established by institutions/agencies/commissions. In Article 8 paragraph (2), it is emphasized that the laws and regulations as referred to in Article 8 paragraph (1) are recognized to exist and have binding legal force as long as they are ordered by more comprehensive legislation high or formed by authority. The expansion of the types of laws and regulations, as confirmed in Article 8 paragraph (1), if it is associated with the provisions of Article 7 paragraph (1), will cause problems. Whether the hierarchical provisions of the legislation in Article 7 paragraph (1) also applies to the provisions of Article 8 paragraph. This research aims to conduct a juridical analysis of whether the laws and regulations in Article 7 paragraph (1) of Law No. 12 of 2011 also apply to the provisions of Article 8 paragraph (1) of Law Number 12 of 2011. Thus, according to the author, the requirements of the hierarchy of laws and regulations as regulated in article 7 paragraph (1) cannot be applied to the laws and regulations stipulated in article 8 paragraph (1). The role of laws and regulations is critical to creating and maintaining harmonization and synchronization of laws and regulations in the sense that their types and hierarchies must be arranged. Hence, there are no conflicts in their implementation.

Keywords : Hierarchy; Harmonization; Legal norms

ABSTRAK

Susunan jenis dan hierarki peraturan perundang-undangan telah ditegaskan dalam Pasal 7 ayat (1) Undang-Undang Nomor 12 Tahun 2011. Selain ketentuan Pasal 7 ayat (1) juga diatur dalam Pasal 8 ayat (1) jenis peraturan perundang-undangan yang dibentuk oleh lembaga/instansi/komisi. Dalam Pasal 8 ayat (2) ditegaskan bahwa peraturan perundang-undangan sebagaimana dimaksud dalam Pasal 8 ayat (1) diakui ada dan mempunyai kekuatan hukum mengikat sepanjang diatur oleh peraturan perundang-undangan yang lebih luas atau dibentuk oleh penguasa. . Perluasan jenis peraturan perundang-undangan sebagaimana ditegaskan dalam Pasal 8 ayat (1) jika dikaitkan dengan ketentuan Pasal 7 ayat (1) akan menimbulkan permasalahan. Apakah ketentuan hierarkis peraturan perundang-undangan dalam Pasal 7 ayat (1) berlaku juga terhadap ketentuan Pasal 8 ayat. Penelitian ini bertujuan untuk melakukan analisis yuridis apakah peraturan perundang-undangan dalam Pasal 7 ayat (1) Undang-Undang Nomor 12 Tahun 2011 juga berlaku terhadap ketentuan Pasal 8 ayat (1) Undang-Undang Nomor 12 Tahun 2011. Dengan demikian, menurut bagi pencipta, persyaratan hierarki peraturan perundang-undangan sebagaimana diatur dalam Pasal 7 ayat (1) tidak dapat diterapkan terhadap peraturan perundang-undangan yang diatur dalam Pasal 8 ayat (1). Peran peraturan perundang-undangan sangat penting untuk menciptakan dan memelihara harmonisasi dan sinkronisasi peraturan perundang-undangan dalam arti harus diatur jenis dan hierarkinya. Sehingga dalam pelaksanaannya tidak ada konflik.

Kata Kunci : Hirarki; Harmonisasi; Norma Hukum

I. INTRODUCTION

In Law Number 12 of 2011 concerning the Establishment of Legislation (Law Number 12 of 2011), Article 1 point 1 it is emphasized that Legislation is a written regulation that contains legally binding norms in general and is formed or stipulated by a State institution or authorized official through the procedures specified in the Legislation. Regarding the arrangement of the types and hierarchy of laws and regulations, it has been emphasized in Article 7, paragraph (1) that the types and hierarchies of statutes and regulations consist of:¹

- 1) the 1945 Constitution of the Republic of Indonesia;
- 2) Decree of the People's Consultative Assembly;
- 3) Laws / Government Regulations in place of Laws;
- 4) Regulations of the Government;
- 5) Regulation Of The President;
- 6) Regulation The Province; and
- 7) Regulation of the Regency/City.

Article 7, paragraph (2) confirms that the legal force of laws and regulations is by the hierarchy referred to in paragraph (1). The explanation of paragraph (2) reads: "In this provision, what is meant by "hierarchy" is the

¹ Firman Freaddy Busroh, *Teknik Perundang-undangan (Suatu Pengantar)*, Jakarta: Cintya Press,16

hierarchy of each type of regulation that is based on the principle that lower laws and rules must not conflict with higher laws and regulations.

Thus, statutory regulations are written regulations that are generally binding and formed by authorized institutions/officials at both the central and regional levels. As an integral and inseparable system hierarchically, the lower level legislation may not conflict with the higher level legislation.² Suppose in the government administration; it is suspected that there is a conflict between one statutory regulation and another hierarchically statutory regulation. In that case, a material review must be carried out on the alleged contradictory legislation.³

In addition to Article 7 paragraph (1), Article 8 paragraph (1) of Law Number 12 of 2011 also confirms that the types of laws and regulations other than those referred to in Article 7 paragraph (1) include rules set by the People's Consultative Assembly, House of Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank of Indonesia, Minister, Agency, Institution, or equivalent Commission established by law.

Then in Article 8 paragraph (2), it is emphasized that the statutory regulations as referred to in Article 8 paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by a higher Legislation or formed based on authority. From the provisions of Article 8 paragraph (1), the legislators have expanded the type of regulations other than what has been regulated in Article 7 paragraph (1).

Due to the expansion of the types of laws and regulations as confirmed in Article 8 paragraph (1), when linked to the provisions of Article 7 paragraph (1), it will cause problems, whether the hierarchical provisions of the laws and regulations in Article 7 paragraph (1) also apply to the provisions of Article 7 paragraph (1). Article 8 paragraph (1) of Law Number 12 the Year 2011.

II. METHOD

This article uses a normative juridical research method carried out with a literature study and discusses and examines primary, secondary, and tertiary legal materials. In this article, the author uses a statutory approach, a conceptual approach, and an analytical approach in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 30 of 2014 concerning Government Administration, and Law Number 12 of 2011 concerning the Establishment of Regulations. While the concepts used are the concept of the rule of law, the idea of legislation, the principle of legislation, the concept of the hierarchy of laws and regulations, and the concept of authority. The research that the author conducted is related to research on legal principles, legal systematics, and study on the level of vertical and horizontal synchronization.

III. ANALYSIS AND DISCUSSION

² Zaeni Asyhadie, Arief Rahman, Mualifah, *Pengantar Ilmu Hukum*, Jakarta: Raja Grafindo Persada, Jakarta. 2016, p. 22

³ Amiroeddin Sjarif, *Perundang-undangan, Dasar, Jenis, dan Teknik Membuatnya*, Jakarta: Penerbit Rineka Cipta, 1997. p. 38.

a. Legal correlation between article 7 paragraph (1) and article 8 paragraph (1) of law number 12 of 2011

Based on Hans Kelsen's theory, namely *Stufenbautheori*, famous for *Stufenbau des Recht*, it is said that *Stufenbau* means multi-story buildings or stairs. The legal system is a continuous process, starting from the abstract to the positive and then to the concrete. So starting from the relative process to the excellent method, then to the concreting process. All the legal norms are an integral part of the pyramid structure.⁴

According to this theory, the legal basis of a norm is at a higher level. In this case, the highest is what is called *Ursprungsnorm* or *Grundnorm*. A lower level norm must not conflict with a higher level norm. According to *Stufenbau des Recht*'s theory, law (all models from the highest to the lowest) is unity in an orderly and logical arrangement. There is no contradiction or contradiction. So it is an analytical staircase building (*logische Stufenbau*).⁵ It starts from the highest norm, down gradually to the lowest norm.

After the amendment, the 1945 Constitution in Article 1 paragraph (3) also stipulates that Indonesia is the law. Therefore, the law becomes a barometer in every state government administration. Law, in theory, has various levels or levels.⁶

Furthermore, regarding the hierarchy of laws and regulations in Indonesia, referring to Law No. 12 of 2011 as regulated in Article 7 Paragraph (1), the types and hierarchy of laws and regulations consist of:⁷

- 1) the 1945 Constitution of the Republic of Indonesia;
- 2) Decree of the People's Consultative Assembly;
- 3) Laws / Government Regulations in place of Laws;
- 4) Regulations of the Government;
- 5) Regulation Of The President;
- 6) Regulation The Province; and
- 7) Regulation of the Regency/City.

In the article's explanation, it is stated that "In this provision what is meant by "hierarchy" is the hierarchy of each type of legislation based on the principle that lower laws and regulations must not conflict with higher laws and regulations".

Based on these provisions, the hierarchy of laws and regulations such as Regency/City Regional Regulations must not conflict with the regulations above; Provincial Regional Regulations must not conflict with the regulations above, Presidential Regulations must not conflict with the regulations above, Government Regulations may not conflict with the regulations above, the laws/Government Regulations in place of Laws must not conflict with the regulations above, the decrees of the People's Consultative Assembly must not

⁴ Ridwan HR. (2014). *Hukum Administrasi Negara*, Jakarta: Raja Grafindo Persada, 2014, 9.

⁵Nomensen Sinamo (2010). *Hukum Administrasi Negara*, Jakarta: Jala Permata Aksara,18

⁶ Widiatama, Hadi Mahmud, and Suparwi.(2020). "Ideologi Pancasila sebagai Dasar Membangun Negara Hukum Indonesia", *Jurnal Usm Law Review*, Vol. 3, No. 2, 2020, p.20

⁷ Law Number 12 of 2011 concerning the Establishment of Regulations

conflict with the regulations above, namely the 1945 Constitution of the Republic of Indonesia.⁸

In this regard, the makers of Law Number 12 of 2011 have expanded the types of statutory regulations so that the types of statutory regulations are not only as stated in the provisions of article 7 paragraph (1) but also include the provisions of article 8 paragraph (1) which consists of regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution, or a commission of the same level established by law.

From what has been described above regarding the hierarchy of laws and regulations, make the provisions of the hierarchy of laws and regulations as regulated in Article 7 paragraph (1) also apply to the provisions of Article 8 paragraph (1) of Law No. 12 of 2011. Institutions establish the laws and regulations regulated in article 8 paragraph (1), agencies/commissions/officials to carry out their respective duties and functions. Thus, the author needs to know in advance the existence of these institutions, agencies, or commissions in the State Administration of the Republic of Indonesia..

According to the 1945 Constitution of the Republic of Indonesia, the institutional structure of the Republic of Indonesia consists of eight state organs having equal positions which directly receive constitutional authority from the Constitution. The eight organs are the House of Representatives, the Regional Representatives Council, the People's Consultative Assembly, the Supreme Audit Agency, the President and Vice President, the Supreme Court, the Constitutional Court, and the Judicial Commission. In addition to these eight institutions, there are also several institutions or institutions whose authorities are regulated in the Constitution, such as the Indonesian National Armed Forces, the Indonesian National Police, Regional Governments, and Political Parties. In addition, there are institutions whose names are not named but whose functions are called but whose authority is stated to be regulated by law.⁹

The reason for the 1945 Constitution as sources of national legal are the first; the 1945 Constitution contains the objectives, grounds, ideals of the law, and basic norms of the Indonesian state, which must be the aims and footing of legal politics in Indonesia.¹⁰

Therefore, we can clearly distinguish between the authority of state organs based on constitutionally entrusted power and the control of state organs based solely on legislatively entrusted power. Even though, in reality, there are institutions or organs whose authority only comes from Presidential Decrees. Examples of institutions established by the Presidential Decree are the establishment of the National Ombudsman Commission, the National Law Commission, and so on. Meanwhile, examples of institutions whose authority

⁸ Mukhlis Taib (2017). *Dinamika Perundang-Undangan Di Indonesia*, Bandung: Refika Aditama. 32

⁹ Bewa Ragawino (2006). *Hukum Administrasi Negara*, Bandung: Unpad, 31

¹⁰ Muhammad Rafi Darajati and Muhammad Syafei, (2020). "Legal System Development in the 21st-Century Era", ICLSSE 2020, p. 5

is granted by law are the National Human Rights Commission, the Indonesian Broadcasting Commission (KPI), the Financial Transaction Reports and Analysis Center (PPATK), and others.¹¹

Based on the analysis above, institutions/agencies/commissions directly receive constitutional authority from the Constitution. There are also institutions whose authority is stated to be regulated by law. Regarding this matter, can it be interpreted that the existence of each institution/agency/commission has different constitutional degrees according to the source of its authority? Likewise, with the laws and regulations established by the institution/agency/commission, does it also determine the degree of the regulation formed due to its source of authority?

The provisions of Article 8 paragraph (1) do not explain the hierarchy of each type of legislation, whether established by institutions/agencies/commissions, which regulations have the highest degree, and which are the lowest. Are the regulations established by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, and the Judicial Commission said to be equal? Then, if the regulation is related to the hierarchy of laws and regulations as stated in Article 7 paragraph (2), is the degree under the Law the same level as the Government Regulation or the Presidential Regulation?

Likewise, regulations established by Bank Indonesia, the Minister, agencies/institutions/commissions such as the National Drug Agency Regulations, General Election Commission Regulations, National Human Rights Commission Regulations, Ombudsman Regulations, etc., where is its position when it is related to the provisions of article 7 paragraph (2) which regulates the hierarchy of the legislation? Thus, according to the author, the requirements of the hierarchy of laws and regulations as regulated in article 7 paragraph (1) cannot be applied to the laws and regulations stipulated in article 8 paragraph (1)

The role of laws and regulations is critical to creating and maintaining harmonization and synchronization of laws and regulations in the sense that their types and hierarchies must be arranged so that there are no conflicts in their implementation.

IV. CONCLUSION

Due to the lack of clarity in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the hierarchy of each type of legislation, whether established by institutions/agencies/commissions, which regulations have the highest and lowest positions. Therefore the provisions of Article 7 paragraph (1), which regulates the hierarchy, cannot be applied to the provisions of article 8 paragraph (1).

The legislators must immediately revise the provisions of Article 8 paragraph (1) of Law Number 12 of 2011. This does not explain the hierarchy of each type of legislation, whether established by institutions/agencies/commissions, which regulations have the highest and

¹¹ Ni'matul Huda (2005). *Hukum Tata Negara Indonesia*, Jakarta: Raja Grafindo Persada, 44

lowest positions, so that hierarchically and is an inseparable unit with the provisions of Article 7 paragraph (1).

REFERENCE

- Amiroeddin Sjarif, *Perundang-undangan, Dasar, Jenis, dan Teknik Membuatnya*, Jakarta: Penerbit Rineka Cipta, 1997
- Bewa Ragawino, *Hukum Administrasi Negara*, Bandung: Unpad, 2006
- Firman Freaddy Busroh, *Teknik Perundang-undangan (Suatu Pengantar)*, Jakarta: Cintya Press
- Muhammad Rafi Darajati and Muhammad Syafei, 2020, "Legal System Development in the 21st-Century Era", ICLSSE 2020
- Mukhlis Taib, *Dinamika Perundang-Undangan Di Indonesia*, Bandung: Refika Aditama. 2017
- Ni'matul Huda , *Hukum Tata Negara Indonesia*, Jakarta: Raja Grafindo Persada, 2005
- Nomensen Sinamo, *Hukum Administrasi Negara*, Jakarta: Jala Permata Aksara, 2010
- Ridwan HR, *Hukum Administrasi Negara*, Jakarta: Raja Grafindo Persada, 2014
- Widiatama, Hadi Mahmud, and Suparwi, "Ideologi Pancasila sebagai Dasar Membangun Negara Hukum Indonesia", *Jurnal Usm Law Review*, Vol. 3, No. 2, 2020
- Zaeni Asyhadie, Arief Rahman, Mualifah, *Pengantar Ilmu Hukum*, Jakarta: Raja Grafindo Persada, Jakarta. 2016