

Legal Establishment For Legal Updates National Democracy In The Era Of Democracy

Titin Saptini*

Doctorate Candidate at Law Faculty, Borobudur University, Jakarta and Lecturely Faculty of Law of Borobudur University

H.Azis Budianto, Megawati Barthos*
Borobudur University, Faculty of Law, Jakarta Indonesia

Abstract

The formation of laws that contain the order of social, national and state life is part of the public decision-making process. Public decisions in the form of this law will be binding and apply to all people in a country. Its formation must provide a public space for the wider community to participate in the process of its formation. Pancasila as the root of the legal ideals of the Indonesian nation has the consequence that in the dynamics of the life of the nation and state, as a view of life adopted will provide coherence and direction (direction) to thoughts and actions.

Reform of national law is directed at realizing laws based on the will of the people (democratic), then laws which are part of the national legal system in the process of their formation must reflect democratic values which are characterized by actively and comprehensively involving all levels of society in order to participate. inside it.

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1. Introduction

In the era of direct democracy, one of the demands for the renewal of the national law of the unitary state of the Republic of Indonesia, namely the formation of laws that regulate the life of all areas of life. Formally and in substance, the law must reflect the aspirations of the people (responsive) so that in the process of its formation it also involves the active participation of the people themselves and the values of Pancasila must color, animate legal reform in Indonesia, both at the substantial level (legal material), structural (legal apparatus) and cultural (legal culture). As a country that has chosen the principle of democracy and combined it with the principle of the rule of law, Indonesia will organize an orderly life and life in society, nation and state using democratic legal rules.¹

The law is part of the activity in regulating society which consists of a combination of human individuals with all their dimensions, so that designing and forming laws that are acceptable to the wider community is a difficult job.² This lies in the fact that the activity of forming laws is a form of communication between the institutions that determine the power of power and the people in a country.³ The difficulties in the formation of this law are now more felt by the Indonesian people, who are currently facing various social problems which are fundamentally multi-dimensional structural and cultural problems.

The formation of law will follow the socio-political structure of each country. For a country that adheres to authoritarian politics, the formation of the law will also define authoritarian characteristics. Meanwhile, when the process of law formation (legislation) is placed in the socio-political context of a democratic country, there will be a compromise of conflicts of values and different interests in society.⁴

Based on the description that has been described previously, the problems that can be formulated from this paper: How is the formation of laws in the context of paying attention to national law in the era of democracy and public participation in the formation of democratic laws?

2. Research Methods

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently. Methodological means according to certain methods and

¹ Suherman Darmanto, *Hukum dan Negara*, Yogyakarta, Jakal Press, 2018, p. 51

² Irawan Soejito, *Teknik Membuat Undang-Undang*, Jakarta, Pradnya Paramita, 2013, p.3.

³ Heru Pramono, *Tehnik Perundang-undangan*, Jakarta, Pena Media, 2017, p. 94

⁴ Anis Ibrahim, *Legislasi dan Demokrasi; Interaksi dan Konfigurasi Politik Hukum Dalam Pembnetukan Hukum di Daerah*, Cetakan Pertama, Malang, In-TRANS Publishing, 2018, p.104.

methods; systematic is based on a system,¹ whereas consistent means the absence of things that conflict in a particular framework.

3. Results And Discussion

3.1. Democracy Theory

From an etymological point of view, democracy comes from the words demos (the people) and cratein (to govern). So, literally the word democracy can be interpreted as the people. According to Tafsir R. Kranenburg in his book "Inleiding in de vergelijkende staatsrechtwetenschap", democracy which is formed from two Greek words means the way that is ordered by the people.²

Democracy itself conceptually carries the basic values that become the focus of its orientation, namely welfare, justice, participation, and universalism. That is, the building of new democracy is considered successful if these basic values can be realized. These values are then referred to as the essence of democracy or the quality of democratic civility. At the practical level, the essential values of democracy must be realized through the development of democratic procedures that can be simplified. Aspects of democracy that cannot be accounted for may not be able to realize these essential values. Thus, both the essential and procedural aspects of strategic positions/roles. It is two sides of the same coin.³

The Websters Dictionary defines democracy as government by the people in which the ultimate power is in the hands of the people and is exercised directly by them or their elected representatives under a free electoral system. According to Dahlan Thaib:⁴

Democracy is a system of government in which the power for government comes from those who are governed or democracy is a pattern of government that involves the people in the decision-making process by those in authority, then the legitimacy of government is the will of the people who choose and control it.

Afan Gaffar, in his book entitled "Indonesian Politics; Transition Towards Democracy", that in another view democracy as a political idea is a universal understanding so that it contains several elements as follows:⁵

1. The administrator of power comes from the people;
2. Every office holder whom the people must be able to bet on the choices they want to make;
3. Manifested directly or indirectly;
4. Rotation of power from one person or group to another in a democracy, the opportunity for rotation of power must exist and be carried out regularly and peacefully;
5. The existence of an electoral process in a democratic country elections are conducted regularly in order to guarantee the people's political right to vote and be elected; and
6. The existence of freedom as a human right to enjoy basic rights in a democracy, every society can enjoy its basic rights freely to express opinions, assemble and associate and others.

Ni'matul Huda, in his book entitled "Indonesian Constitutional Law", that to implement democratic values it is necessary to organize several institutions, namely:⁶

1. Responsible governance;
2. A House of Representatives representing groups and interests in society and elected by free and secret elections and at least two candidates for each seat;
3. a political organization that includes one or more political parties;
4. The press and mass media are free to express opinions;
5. A free judicial system to guarantee human rights and maintain justice.

Nevertheless, a country that can be said to be the most democratic does not fulfill the following elements:

1. There is freedom to form and become members of associations;
2. There is freedom of expression;
3. There is a right to vote in voting;
4. There is an opportunity to be elected or occupy various government or state positions;
5. There is a right for political activists to campaign for support or votes;
6. There are various sources of information;
7. There are free and fair elections;
8. All institutions that formulate government policies must be based on the will of the people.

¹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia, Jakarta, 1984, p. .42.

² Koencoro Pranoto, *Sistem Pemerintahan Demokrasi*, Bandung: Eresco, 2017, p. 6.

³ Syakrani Sudibyo, *Implementasi Otonomi Daerah dalam Perspektif Good Governance*, Yogyakarta: Pustaka Pelajar, 2019, p. 62

⁴ Dahlan Thaib, *Pancasila Yuridis Ketatanegaraan*, Yogyakarta, Jakal Press, 2014, p.97.

⁵ Afan Gaffar, *Politik Indonesia; Transisi Menuju Demokrasi*, Yogyakarta, Pustaka Pelajar, 2005, p. 15.

⁶ Ni'matul Huda, *Hukum Tata Negara Indonesia*, Jakarta, RajaGrafindo Persada, 2007, p..245.

3.2. Laws in the Context of Renewing National Laws in the Era of Democracy

In its position as a basis and ideology again even very strong, then Pancasila must be used as a paradigm in legal development, including all not its efforts. Pancasila as the basis of the state does have a juridical connotation in the sense of the birth of various regulations that are arranged based on a hierarchy and sourced from it.

As a legal development paradigm, Pancasila has at least four guiding principles that must be used as guidelines in the formation and enforcement of laws in Indonesia, namely;

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| First | the law must guarantee the nation and guarantee the integrity of the nation and therefore it is not allowed to have laws that plant the seeds of disintegration |
| Second | The law must be able to guarantee social justice by providing special protection for the weak so as not to be exploited in free competition against the strong |
| Third | law must be built democratically as well as build democracy with democracy (state of law). |
| Fourth | must not be discriminatory under any primordial law and must create tolerance based on humanity and existence. ¹ |

Pancasila as the root of the legal ideals of the Indonesian nation has the consequence that in the dynamics of the life of the nation and state, as a view of life adopted will give coherence and thought to thoughts and actions. Legal ideals are ideas, intentions, inventions and thoughts regarding law or perceptions of the meaning of law, which are deep, consisting of three elements, namely justice, usability and legal certainty. The ideal of law is formed in the minds and hearts of humans as a product of the integration of views of life, religious beliefs and social realities. In line with that, the science of law and Indonesian law should rely on and refer to the ideals of the law.

In the Key National Law Convention on the importance of the Grand Design of the National Legal System and Politics in the context of developing national law and the philosophical foundation of Pancasila and the state constitution, namely the 1945 Constitution. The Grand Design of the National Legal System and Politics is a design that serves as a guideline for all stakeholders which includes everything from planning, legislation, dissemination and community legal culture.

According to Barda Nawawi Arief, Grand Design is a large design or large pattern. Grand Design of national law means a large design in the development of the national legal system which includes all components of the legal system, namely the substance, structure and legal culture components. The Grand Design of the National Legal System and Politics must be based on and directed at the Preamble to the 1945 Constitution. The Grand Design of the National Legal System and Politics must remain based on the Pancasila paradigm, namely:

- a. Divinity Paradigm (moral-religious),
- b. Paradigm of Humanity (humanistic).
- c. Nationality Paradigm (unity/nationalistic),
- d. Populist/Democratic Paradigm,
- e. Social Justice Paradigm.

In the context of legal politics, the laws that will be formed are clearly influenced by legal politics which is the official state policy relating to the enactment of the law. According to Satjipto Rahardjo, legal politics is the activity of choosing and the methods to be used to achieve certain social and legal goals in society.²

State legal politics is an official policy (legal policy) regarding laws that will be enforced or will not be enforced (making new rules or old rules) to achieve state goals.³

"A democratic political configuration will produce legal products with responsive or autonomous characteristics, while an authoritarian (non-democratic) political configuration will produce legal products with animated/orthodox or oppressive characteristics".

This legal process has actually been going on for a long time. The national law that works in this case is the formation of national legislation which is the product of the legislature, which is based on the values that live in society and the formation of law (living law). This can be seen in everyday life that there are still various

¹ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta: Raja Grafindo Persada, 2010, p.55.

² Satjipto Rahardjo, *Ilmu Hukum*, Bandung, Citra Aditya Bakti, 2005, p. 352.

³ Moh. Mahfud MD, *Politik Hukum*, Yogyakarta, Jakal Press, 2007, p..29.

activities of human life which are actually laws that live in society, but there are no laws and regulations that regulate them. This condition can be reached, the needs of human life and human activities are numerous and varied, as well as rapidly changing and developing, while laws and regulations cannot accommodate all aspects of human life as completely and clearly as possible.

Changes in law must start from the existence of conditions, events, and relationships in society, with the laws that govern them. However, it is impossible for legal law to be open to matters that it regulates, so that when the things that should be regulated have changed in such a way, of course the changes in the law are for adjustment so that the law is still effective in its regulation. Legal reform needs to be carried out comprehensively, covering all components in the legal system which according to Friedman consists of a substantial component, a structural component and a cultural component. There is a very close relationship between seeing substantial components and cultural components. Components that are built based on the cultural components possessed by the nation.¹

Changes in values or basic rules in society require legal changes so that they can always adapt to society. The problem of adjusting the law to changes that occur in society, especially what is meant is written law or statutory regulations (in a broad sense). This is related to the laws and regulations that are static and rigid.

The process of law formation in the perspective of democracy requires that the inputs that are taken into consideration in determining the law come from the aspirations of the citizens of the community which include various interests in their lives. People's aspirations are channeled through people's representatives who are really observant and responsive to the conscience of the people they represent. These aspirations are then raised in legislative institutions that appear on political products that truly reflect the aspirations of the people.²

With such a mechanism, what is imposed on the legislators is as follows:

- a. the ability to communicate with the people it represents to understand and absorb their desires, aspirations and demands, in a truly openly representative manner.
- b. Openness is needed here, because the aspirations of the community sometimes appear in the form of proposals, but also in the form of criticism, both against the government as the bearer of the community and as law enforcers, and perhaps also against the current rule of law whose values do not reflect the interests and aspirations of the people. they.
- c. Ability to vocally convey points of proposal regarding the interests of the people he represents in the people's representative/legislative forum, with a representative, systematic, and radical attitude.
- d. The ability to make formulations or articulations of agreed aspirations in the form of legal rules. For example, it becomes a law, regional regulation.
- e. Ability in terms of basic knowledge (theoretical) and experience (practical) regarding strategic management (telstra), strategic planning (renstra), monitoring strategy (monstra), strategy politics (polstra), strategy estimation (kirstra), control and deterrence.³

The formation of law will follow the socio-political structure of each country. For a country that adheres to authoritarian politics, the formation of the law will also define authoritarian characteristics. This is because democracy requires broad citizen participation in all state actions, at the same time in this democratic system it does not allow discrimination against a group in society.⁴

A law made unilaterally by the legislator, it is very possible that its presence will be rejected because it is not in accordance with the sense of justice in society. This is where the importance of community participation is involved in the law-making process. Participatory democracy is expected to guarantee more for the realization of responsive legal products, because the community participates and has a law.

The existence of public participation in the formation of this law will also make the community more meaningful and the government more responsive in the democratic process, thus giving birth to a moral government and responsible citizens.⁵

The law that contains the order of social, national and state life is part of the public decision-making process. Public decisions in the form of this law will be binding and apply to all people in a country. Must provide public space for the wider community to participate in the process of its formation.⁶

3.3. Forms of Community Participation in the Formation of Democratic Laws

¹ Khozim, *Sistem Hukum Perspektif Ilmu Sosial*, Bandung, Nusa Media, 2009, p.19.

² M. Solly Lubis, *Politik dan Hukum di Era Reformasi*, Bandung, Mandar Maju, 2000, p. 23

³ *Ibid*, p. 31

⁴ Satjipto Rahardjo, *Hukum, Masyarakat, dan Pembangunan*, Bandung, Alumni, 2002, p. 40.

⁵ Sahat Simamora, *Partisipasi Politik di Negara Berkembang*, Jakarta, Rineka Cipta, 2014, p. 25.

⁶ Saifudin, *Partisipasi Publik Dalam Pembentukan Peraturan Perundang-Undangan*, Yogyakarta, UII Press, 2009, p.100.

In the 1945 Constitution of the Republic of Indonesia Article 28 it is emphasized that the freedom of association and assembly, expresses thoughts orally and in other writings stipulated by law. This means that our constitution (UUD NRI 1945) has guaranteed protection for the public in expressing their thoughts, both orally and in writing to form laws.¹

In Law no. 12 of 2011 concerning the Formation of Laws also provides guarantees for the public to participate in the formation of laws in Article 96 which reads as follows:

- (1) The public has the right to provide input orally and/or in writing in the Establishment of Legislative Regulations.
- (2) The verbal and/or written input as referred to in paragraph (1) may be made through: a. public hearings; b. Work visit; c. socialization; and/or seminars, workshops, and/or discussions.
- (3) The community as referred to in paragraph (1) is people or groups who have an interest in the substance of the Draft Legislation.
- (4) In order to facilitate the public in providing input orally and/or in writing as referred to in paragraph (1), each Draft Legislation must be easily accessible by the public.

Community participation in the formation of this law can be done individually or collectively by people who are outside public office. The actors of this community participation are community forces which are included in the political infrastructure such as the press, community leaders, interest groups, universities, universities and political parties that do not have their representatives in representative institutions. these political infrastructure forces can exert control and influence on various public decisions that will be issued through the law.

The law-making process can basically be divided into three stages, namely: the ante-legislative stage, the legislative stage and the post-legislative stage. In these three stages, basically the community can participate in providing input according to their wishes. The public can participate in all stages of the law-making process or choose only one stage. However, this form of community participation is different, although some are the same from one stage to another. This means that public participation at the stage before the legislature is certainly different from the form of community participation at the legislative stage and the post-post stage. So, the form of community participation in the process of forming the law is adjusted to the stages carried out in the middle.

- a. Community participation at the ante-legislative stage consists of:
 1. Community participation in the form of research
 2. Community participation in the form of discussions, workshops and seminars
 3. Community participation in the form of proposals for initiatives
 4. Community participation in the form of drafting a law
- b. Community participation at the legislative stage consists of:
 1. Public participation in the form of hearings/RDPU in the DPR
 2. Community participation in the design of alternative draft laws
 3. Community participation in the form of input through print media
 4. Community participation in the form of input through electronic media
 5. Community participation in the form of demonstrations
 6. Community participation in the form of discussions, workshops and seminars
- c. Community participation at the post-legislative stage consists of:
 1. Protest against the new law
 2. Demands for testing against the law
 3. Socialization of the law

4. Closing

Based on the description that has been described previously, it can be opened several things as follows:

- 4.1. Reform of national law is directed at realizing laws that are based on the will of the people (democratic), so laws that are part of the national legal system in the process of their formation must reflect democratic values which are characterized by actively and comprehensively involving all levels of society to participate in it.
- 4.2. Forms of public participation in the formation of democratic laws include:
 - a. Community participation at the ante-legislative stage consists of:
 - b. Community participation at the legislative stage consists of
 - c. Community participation at the post-legislative stage.

¹ Pasal 28 Undang-Undang Dasar Negara Republik Indonesia.

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