

The Role of Legal Analysis and Evaluation in Realizing the Formation of Better Legislation

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Abstract : *Evaluation of legal rules will produce recommendations on whether the rules need to be changed, revoked, or maintained. This process is part of the ex-post legal analysis method carried out on legal rules that have been enacted in accordance with Article 7 of the PPP Law , including Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, Regency/ City Regulations, and other types of legal rules as stipulated in Article 8 paragraph (1) of the PPP Law . In legal analysis and evaluation, several methods are used with steps to inventory data on regulations related to the issues that have been determined, including colonial regime regulations that are still in effect today. Related supporting data is also needed to complete the material. Analysis and evaluation of related regulations are deepened by using the supporting data for further refinement. Based on Results Report Analysis And Evaluation Law related order manage government by Body Coaching Law National (BPHN) Ministry Law and human rights in 2020 , there are a number of The law that was carried out analysis And evaluation , including : Law Number 15 of 2006 concerning the Audit Board, Law Number 15 of 2004 concerning the audit of state financial management and accountability, Law Number 37 of 2008 concerning the Ombudsman, Law Number 25 of 2009 concerning Public Services, Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration and several others.*

Keywords : *Legal Analysis and Evaluation , Legislation, Indonesia*

Abstrak : Evaluasi terhadap peraturan perundang-undangan akan menghasilkan rekomendasi apakah peraturan tersebut perlu diubah, dicabut, atau dipertahankan. Proses ini merupakan bagian dari metode analisis hukum ex-post yang dilakukan terhadap peraturan perundang-undangan yang telah diundangkan sesuai dengan Pasal 7 UU KPS, meliputi Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang, Peraturan Pemerintah, Peraturan Presiden, Peraturan Daerah Provinsi, Peraturan Daerah Kabupaten/Kota, dan jenis peraturan perundang-undangan lainnya sebagaimana dimaksud dalam Pasal 8 ayat (1) UU KPS. Dalam analisis dan evaluasi hukum digunakan beberapa metode dengan langkah-langkah inventarisasi data peraturan perundang-undangan yang terkait dengan permasalahan yang telah ditetapkan, termasuk peraturan perundang-undangan peninggalan rezim kolonial



yang masih berlaku hingga saat ini. Diperlukan pula data pendukung terkait untuk melengkapi materi. Analisis dan evaluasi terhadap peraturan perundang-undangan terkait diperdalam dengan menggunakan data pendukung tersebut untuk penyempurnaan lebih lanjut. Berdasarkan Hasil Analisis dan Evaluasi Laporan Peraturan Perundang-undangan terkait tata kelola pemerintahan oleh Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum dan Hak Asasi Manusia Tahun 2020, terdapat sejumlah peraturan perundang-undangan yang dilakukan analisis dan evaluasi, diantaranya : Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan, Undang-Undang Nomor 15 Tahun 2004 tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara, Undang-Undang Nomor 37 Tahun 2008 tentang Ombudsman, Undang-Undang Nomor 25 Tahun 2009 tentang Pelayanan Publik, Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara, Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan dan beberapa lainnya.

Kata kunci : Analisis dan Evaluasi Hukum, Perundang-undangan, Indonesia

I. INTRODUCTION

The Republic of Indonesia is a state of law according to Article 1 Paragraph (3) of the 1945 Constitution; this formulation reflects the concept of a state philosophy that gives power to law or the supremacy of law, which means that in life together in Indonesia, the main thing that must be upheld is the legal life in society. In the concept of a state of law, Indonesia has placed law above humans, even above the law makers themselves. Therefore, law should be the basis of all aspects of Indonesian society, including social, political, religious, and cultural life. ¹The use of the principle of "State of Law" in Indonesia is not always the same as the concept of Rechtsstaat in Continental Europe or the rule of law in the Anglo Saxon tradition, but Indonesia still prioritizes the principle of running a state life based on law. This state principle, ideally, is not only based on legal products but is also assessed from the quality of its law enforcement.²

Legislation as written law has the purpose of providing legal certainty in its implementation. Although it has weaknesses, this regulation is important as a characteristic of a state of law and as a planning framework and guiding instrument in implementing a plan in a modern welfare state. ³However, legislation must also be understood as part of the essence of law, although there are also unwritten laws that apply in society and are considered to reflect the values of life in society.⁴

Written law in the form of legislation is created intentionally by authorized institutions. However, often written law does not correspond to the development of

¹Noor Tri Hastuti, Measuring the Degree of Type and Function in the Hierarchy of Legislation (Article 7 (4) of Law No. 10 of 2004 concerning the Formation of Legislation, *Perspective Journal* : Surabaya, 2007, Volume XII No. 3 of 2007, September Edition), p. 197.

²Noor Tri Hastuti, Measuring the Degree of Type and Function in the Hierarchy of Legislation (Article 7 (4) of Law No. 10 of 2004 concerning the Formation of Legislation, *Perspective Journal* : Surabaya, 2007, Volume XII No. 3 of 2007, September Edition), p. 197.

³Jalaluddin, The Nature and Function of Legislation as a Critical Touchstone for the Idea of Forming Good Regional Regulations, *Jurnal Aktualita* (Bandung, Unisba Postgraduate Publisher, 2011) Vol 6, No 3, 2011, pp. 7-8.

⁴Jalaluddin, The Nature and Function of Legislation as a Critical Touchstone for the Idea of Establishing Good Regional Regulations, *Jurnal Aktualita* (Bandung, Unisba Postgraduate Publisher, 2011) Vol 6, No 3, 2011, p. 4 .

community values or is unable to follow these developments.⁵ Therefore, legal experts focus on the process of forming laws and regulations, which are intended to create desired patterns of behavior. Laws and regulations also serve as a guide to achieving the goals or interests of society, as well as a tool for government legitimacy.⁶

Discussion on Law Number 13 of 2022 cannot be separated from the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law. According to the Academic Manuscript of Law Number 13 of 2022, the background of the law is based on the Court's Legal Consideration No. [3.18.2.2] in the Constitutional Court Decision Number 91/PUU-XVIII/2020. In this consideration it is stated that :⁷ " it is important for the Court to emphasize that any technique or method used by the legislators in an effort to simplify the law, eliminate overlapping laws, or accelerate the process of forming laws, is not a constitutional problem as long as the method is ensured in a definite and standard guide, and is regulated in advance in the technique of drafting legislation. So, this method cannot be used as long as it has not been adopted in the law on the formation of legislation. "

This is clearly an interesting topic of debate. Previously, it should be noted that the ruling stated that Law Number 11 of 2020 concerning the Job Creation Law was conditionally unconstitutional. The Constitutional Court has recognized the existence of a Conditional Constitutional Decision (*conditionally constitutional*) and conditionally unconstitutional (*conditionally unconstitutional*). The conditional verdict variant was first introduced by the Constitutional Court in Decision Number 4/PUU-VII/2009. The meaning of the Conditionally Unconstitutional Decision (*conditionally unconstitutional*) is that an article or law is unconstitutional or contrary to the constitution as long as it does not meet the requirements given by the Constitutional Court. To understand and analyze the emergence of the order to improve the PPP Law in Decision 91/PUU-XVIII/2020, the interpretation of the 9 Decisions in the Constitutional Court Decision No. 91/PUU-XVIII/2020 must be given by looking at and analyzing the ratio decidendi in the legal considerations that are constructed. In court decisions, there are two characters of legal considerations, namely *ratio decidendi* and *obiter dictum* .

Based on the book published by the Secretariat General and the Clerk's Office of the Constitutional Court, *the ratio decidendi* is a part of legal considerations that are used as a basis or reason for determining a decision formulated in a ruling. This part cannot be separated from the ruling and has binding legal force and can be formulated as a legal rule. On the other hand, there is also a part of legal considerations that is not directly related to the legal problem faced and therefore is not related to the ruling, usually an illustration or analogy in compiling legal consideration arguments. This part is called *obiter dictum* / *obiter dicta* which basically have no legally binding force.⁸

⁵Jalaluddin, The Nature and Function of Legislation as a Critical Touchstone for the Idea of Forming Good Regional Regulations, *Jurnal Aktualita* (Bandung, Unisba Postgraduate Publisher, 2011) Vol 6, No 3, 2011, pp. 4-5 .

⁶Jalaluddin, The Nature and Function of Legislation as a Critical Touchstone for the Idea of Establishing Good Regional Regulations, *Jurnal Aktualita* (Bandung, Unisba Postgraduate Publisher, 2011) Vol 6, No 3, 2011, p. 9 .

⁷DPR-RI Expert Body, *Academic Manuscript of the Draft Law on the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation* , (Jakarta: DPR-RI PUU BK Center, 2022), p. 1.

⁸Quoted by Yuniar Riza Hakiki and Taufiqurrahman, "The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision", *Jurnal Konstitusi* , Vol. 20 Issue 1 (March 2023), p. 81.

Thus, Legal considerations and the Decision Order are an inseparable whole in providing interpretation. As explained by Maruarar Siahaan, Ratio decidendi is part of the considerations used as the basis or reason for the decision formulated in the order. This part of the considerations cannot be separated from the decision order and has binding legal force, which can be said to be a legal principle.⁹

In Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, there have been 18 (eighteen) changes, both in articles, paragraphs, and definitions. This change is interesting because it is based on the legal considerations of the Constitutional Court in Decision No. 91/PUU-XVIII/2020 which emphasizes the importance of meaningful participation and the formation of a legal basis for the formation of laws using the omnibus law method. This aims to ensure that the Formation of Legislation can be carried out properly and in accordance with the correct procedures.

But in this case, it turns out that the DPR and the Government not only changed both, but also many substances that were then changed both in terms of the coordination line and others. Therefore, the author will try to explain some of the changes that occurred regarding Law Number 13 of 2022 which is the result of the Constitutional Court decision No. 91/PUU-XVIII/2020. In the discussion later, the author will group these changes into 7 topics that are in accordance with the law. First, related to Openness and Public Participation; Second, related to changes in coordination; Third, related to the inclusion of the omnibus law method; Fourth, related to Online Presence and online signature or electronic signature; Fifth, changes related to the addition of tasks/authorities; Sixth, the involvement of legal analysts and legislative analysts; and Seventh, Article 72 concerning the permissibility of minor-scale justification of laws after the Joint Approval stage between the DPR and the Government.¹⁰

In the second amendment to the PPP Law, there are provisions regarding Monitoring and Review as well as Analysis and Evaluation which are regulated in Article 95A for monitoring and review, and Article 97C for orders to conduct analysis and evaluation related to Harmonization, rounding, and consolidation of the concept of the Draft Law from the DPR (Article 46 paragraph 2); Draft Law from the President (Article 46 paragraph 3); Draft Law from the DPD is submitted in writing by the DPD leadership to the DPR leadership and must be accompanied by an Academic Manuscript (Article 48 paragraph 1); Harmonization, rounding, and consolidation of the concept of the Draft Government Regulation (Article 54 paragraph 2); Harmonization, rounding, and consolidation of the concept of the Draft Presidential Regulation (Article 55 paragraph 2); Harmonization, rounding, and consolidation of the concept of the Draft Provincial Regulation (Article 58).

In this context, Lydia Silvana Djaman, Deputy for Legislation and Legal Administration of the Ministry of State Secretariat, explained that although there are differences in terms between monitoring and review with PUU analysis and evaluation, the essence is the same, namely producing quality regulatory products. Monitoring and review need to involve the relevant Ministries or institutions because in practice they are

⁹Maruarar Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia*, (Jakarta: Sinar Grafika, 2012), p. 211.

¹⁰Kafin Muhammad, *Analysis of the Formation of Law Number 13 of 2022 Concerning the Second Amendment to Law Number 12 of 2011 Concerning Regulations for the Formation of Legislation (Siyasah Dusturiyah Perspective)*, Thesis, Salatiga, State Administrative Law Study Program, Faculty of Sharia, State Islamic University of Salatiga, 2023, pp. 73-74

the ones who will carry out these activities and it is hoped that the results will be more comprehensive.¹¹

A new article has been added to Law Number 13 of 2022, namely regarding the participation of legal analysts and legislative analysts. The articles in question are Article 98 paragraph 1a and Article 99. The difference between the two is not only in the meaning of the words, but also in their authority. Legal analysts only participate in the formation of legislation, while legislative analysts participate in the formation of laws and regulations, provincial-level regional regulations, and district/city regional regulations.

II. RESEARCH METHODS

This research is a normative legal research that uses normative case studies, such as reviewing the Law. The normative legal research method or library legal research method is a method used in legal research by examining existing library materials.¹² The first stage of normative legal research is research to obtain objective law, namely by examining legal problems. The second stage of normative legal research is research to obtain subjective law.¹³ The focus of normative legal research is the inventory of positive law, legal principles and doctrines, legal discovery in *in concreto* cases, legal systematics, levels of synchronization, comparative law, and legal history.¹⁴ The approach method in this research is the statutory regulatory approach.¹⁵

The research conducted is descriptive in nature, namely describing the symptoms in the community environment towards a case being studied, the approach used is a qualitative approach which is a research method that produces descriptive data.¹⁶ The use of a qualitative approach by the author aims to understand the symptoms being studied.¹⁷ This research was conducted with the intention of determining the legal principles (*rechtsbeginselen*) that can be applied to written positive law and unwritten positive law.¹⁸

III. DISCUSSION

1. Analysis and Evaluation of Legislation

The definition of Evaluation of Legislation includes an understanding meaning of analysis. Analysis according to the great dictionary of the Indonesian Language is "an investigation of an event to find out the actual situation", while evaluation is "assessment, giving an assessment". Evaluation of legislation is defined as "an effort to assess

¹¹Public Relations and Protocol of BPHN, "Strengthening the Role of Legal Analysts, BPHN Discusses the Concept of the Draft Presidential Regulation on Monitoring and Review of Legislation," <https://bphn.go.id/publikasi/berita/2022100507433669/perkuatperan-analis-hukum-bphn-bahas-konsep-rancangan-peraturan-presiden-tentang-pemantauan-dan-peninjauan-peraturan-perundang-undangan>, accessed November 4, 2024.

¹²Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, 11th Edition. Jakarta: PT Raja Grafindo Persada, 2009, pp. 13–14.

¹³Hardijan Rusli, "Normative Legal Research Method: How?", *Law Review*, Faculty of Law, Pelita Harapan University, Volume V No. 3, 2006, p. 50.

¹⁴Abdul Kadir Mulya, *LEGAL LAW AND LEGAL RESEARCH*. Cet. 1. Bandung: P.T. Citra Aditya Bakti, 2004. p. 52

¹⁵Peter Mahmud Marzuki, *LEGAL RESEARCH*. Cet. 2. Jakarta: Tomena, 2008. p.m. 29

¹⁶Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 1986, p. 32.

¹⁷Soerjono Soekanto, *Introduction to Research.....Ibid.*

¹⁸Soerjono Soekanto, *Introduction to Research Ibid.* p. 252.

legislation." Based on this definition, the activity of evaluating legislation is part of the Monitoring and Review activities as stated in Article 1 number 14 of the Law on the Formation of Legislation.

The position of Evaluation of Legislation is an integral part of the process of forming legislation in accordance with the provisions in the considerations 'considering' and General Explanation of the Law on the Formation of Legislation. In accordance with the provisions of Chapter XA of the Law on the Formation of Legislation which regulates Monitoring and Review of Laws. Article 95A paragraph (1) states that Monitoring and Review of Laws is carried out after the Law comes into effect. The definition of Monitoring and Review according to Article 1 Number 14 is an activity to observe, record, and assess the implementation of applicable Laws so that the achievement of planned results, the impacts caused, and their benefits for the Unitary State of the Republic of Indonesia are known. Evaluation is an activity to provide an assessment. Thus, Evaluation of legislation is an integral part of Review and Monitoring.

Evaluation of laws and regulations covers all types of laws and regulations at the central and regional levels. This evaluation is ex-post because it is carried out on laws and regulations that have been enacted/determined. The types of laws and regulations evaluated include Laws (UU), Government Regulations (PP), Presidential Regulations (Perpres), Provincial Regulations (Perda Provinsi), Regency/City Regulations (Perda Kabupaten/Kota), and other types of laws and regulations.

The actions that must be taken to evaluate statutory regulations are as follows:

- a. Collecting information on the implementation of the evaluation of laws and regulations requires legal materials related to the issues and/or laws and regulations that have been determined. The first step is to collect laws and regulations related to the issues and/or laws and regulations, including colonial regulations that are still in effect today. To complete the data on laws and regulations, supporting data is also needed, such as: a. Decisions of the Constitutional Court related to the results of judicial review of the Law; b. Decisions of the Supreme Court related to the results of judicial review of laws and regulations under the Law; c. Court decisions that have permanent legal force; d. Related international agreements; e. Results of legal and/or non-legal research; f. Legal and/or non-legal studies; g. Government policies; and h. Public input from seminars, workshops, focus group discussions, public discussions, and print and electronic mass media.
- b. After taking inventory, the next step is to evaluate the legislation using six dimensions that have several variables and assessment indicators. The six dimensions include: a. Pancasila Dimension; b. Dimension of Accuracy of Types of Legislation; c. Dimension of Disharmony of Regulation; d. Dimension of Clarity of Formulation; e. Dimension of Conformity of Principles of Legal Field of Relevant Legislation f. Dimension of Effectiveness of Implementation of Legislation.
- c. Preparation of Recommendations Basically, the preparation of recommendations is carried out to offer solutions to problems contained in statutory regulations, such as what steps should be taken based on the results of the analysis of a statutory regulation. Recommendations can be given based on a review of the legal sub-system aspect, for future policy needs, such as its legal substance, legal structure, and legal

culture. Recommendations are given with the aim of providing solutions to statutory regulations that have been evaluated, both article by article and as a whole. Recommendations can be in the form of statements to be revoked, changed, left, and/or other actions to increase the effectiveness of the implementation of norms in the statutory regulations being evaluated. To follow up on recommendations from the results of the evaluation of statutory regulations, weighting can be used as a tool to determine the urgency of follow-up. Follow-up to recommendations from the results of the evaluation is divided into three categories, namely: 1) Very Urgent; 2) Urgent; and 3) Not Urgent. This category can be a guideline for determining the priority of submitting changes/revocations of statutory regulations whether in the current year, the following year, or included in the list of planning programs for the formation of statutory regulations (such as the list of National Legislation Programs, Provincial Legislation Programs, Presidential Legislation Programs, Regional Regulation Formation Programs, and so on). Determination of the follow-up category of evaluation recommendation results is carried out after the evaluation is completed and recommendations have been prepared based on revocation, changes, left alone, and/or other actions to improve the effectiveness of the implementation of statutory regulations.

The determination of this follow-up category is determined by the number of problematic articles, the weight of the Assessment Dimension value, and the impact caused. The more problematic articles, the greater the weight of the dimensions, and the significant impact caused, the more urgent the follow-up of the recommendations. The weighting of the dimension values can be used to determine the weight of the Pancasila Dimension value which is ideally the largest among the six dimensions, while the Clarity of Formulation dimension is given the smallest weight of the other dimensions. Meanwhile, the moderate value weight is in the Dimension of the Accuracy of the Type of Legislation, the Dimension of Disharmony, the Dimension of the Conformity of the Principles of the Legal Field of the Relevant Legislation, and the Dimension of the Effectiveness of the Implementation of Legislation.

In this context, various consequences also arise, ranging from the increasing number of required JFT Drafting Legislation, the need for a priority scale in planning, to the need for clarity on the status of a law in the follow-up stage. The addition of the number of JFT Drafting Legislation workers is needed because of changes to one of the articles stating that "Harmonization, rounding, and consolidation of the concept of drafting Regional Regulations and Regional Head Regulations are carried out by the Regional Office of the Ministry of Law and Human Rights". Additional human resources are needed in the JFT Drafting Legislation because that section is the one that receives the task. This is also because in the first amendment to Law No. 12 of 2011, namely Law No. 15 of 2019, only Regional Regulations were harmonized, rounded and strengthened by the Regional Office of the Ministry of Law and Human Rights.

Then, we go into the second issue related to the need for a priority scale in the formation of laws and their follow-up. Legal expert from the University of Indonesia, Fitriana Alan Sjarief, stated that the monitoring and evaluation pattern will continue to

develop, and the most important thing is the definite method and indicators. She also mentioned that the BPHN Kemenkumham is responsible for monitoring, reviewing, and evaluating various laws. Fitriana explained that monitoring and review consist of three stages: planning, implementation, and follow-up. In planning, it is important to identify, determine the priority scale, and consider the validity of the law. In the implementation stage, attention must be paid to the impact of the implementation of the law, implementing regulations, and harmonization in the law. While in the follow-up stage, recommendations will be produced regarding whether the law needs to be maintained, revised, or revoked.¹⁹

According to Constitutional Justice Enny Nurbaningsih, it is important to link the concept of Indonesia as a unitary state where regional governments are part of the state government. Although regional governments have the authority to manage their own household affairs based on the principles of autonomy and assistance tasks, in legal matters, this remains the business of the central government. Therefore, analysis and evaluation guidelines are part of the manifestation of absolute legal affairs and must be applied to the regional level. This can be applied to the regions because the provisions of Article 95A of Law No. 13/2022 are included in the chapter title "Consolidation and Review of Laws". The absence of other provisions in Law No. 15 of 2019 and Law No. 13 of 2022 which state the *mutatis mutandis* nature of the provisions on "monitoring and review" makes this a correction, it should also be applied to the "Regional Regulation" on monitoring and review as previous provisions that always *mutatis mutandis* for regions.²⁰

Previously, there were changes to Article 98 paragraph 1a and Article 99. These two articles have quite clear differences, not only in the meaning of the words, but also in their authority. Legal analysts are only involved in the formation of laws, while legislative analysts are involved in the formation of laws and regulations, provincial regulations, and district/city regulations.

Of the two articles, there is no explanation regarding Legal Analysts, which is not clearly stated in the explanation of Article 98 paragraph 1a. This is different from Article 99, where according to the definition of Article 99, what is meant by Legislative Analyst is "state civil servants who are tasked with providing support in the formation of Laws, Provincial Regulations, and Regency/City Regulations".

2. The Role of Legal Analysis and Evaluation in the Formation of Better Legislation

On June 16, 2022, Law No. 13 of 2022 concerning the Second Amendment to the Formation of Legislation (UU P PP - Second Amendment) was officially announced. The law has undergone changes and/or additions to a number of quite significant articles, and adopts the omnibus law method which was previously unfamiliar in the national legal system. With the changes in Law P PP - Second Amendment, it becomes a legitimate way

¹⁹Leski Rizkinaswara, "Electronic Signatures as a Legal Solution in the Digital Era," <https://aptika.kominfo.go.id/2021/06/tanda-tangan-elektronik-jadi-solusilegalitas-di-era-digital/>, accessed November 4, 2024.

²⁰MKRI Public Relations, "Enny Nurbaningsih Discusses Constitutional Design for Legal Development in the Regions," <https://www.mkri.id/index.php?page=web.Berita&id=18392&menu=2>, accessed November 4, 2024.

to improve Law Number 11 of 2020 concerning Job Creation (Job Creation Law) which was previously declared conditionally unconstitutional through the Constitutional Court's decision regarding the formal test of the Job Creation Law.

Why is that? The answer is quite reasonable, because to legalize and ratify the changes to the Job Creation Law which is a law from the Omnibus Law, it is necessary to first change the provisions of Law No. 12 of 2011 in conjunction with Law No. 15 of 2019 (UU P PP -Before the Second Amendment-hereinafter referred to as UU P PP) by including the omnibus method which was previously not regulated in the procedure for forming and changing laws. UU P PP is considered a guide to the procedure for making laws from various types and hierarchies of laws and regulations because it contains principles and procedural arrangements from the planning stage to ratification.

Several important norms that were changed, added, or inserted in the P PP Law - Second Amendment can be found in the Explanation of Article 5 letter g, Article 9, Article 42A, Article 49, Article 58, Article 64 paragraph 1a and paragraph 1b, Article 72 paragraph 1a, paragraph 1b and paragraph 2, Article 73, Article 85, Explanation of Article 95, Article 95A paragraph 3, paragraph 3a and paragraph 3b, Explanation of Article paragraph 2 and paragraph 4, Article 96, Article 97A, Article 97B, Article 97C, Article 97D, Article 98 paragraph 1a, and Article 99.²¹

The Importance of Position

The process of forming legal regulations that is carried out in a planned, integrated and sustainable manner as explained in the considerations of the PPP Law is expected to produce regulations that are in line with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia and accommodate the principles of formation and material of legal regulations as regulated in Article 2 and Article 6 of the PPP Law to support the implementation of the development of law and the national legal system.

The development of the essence of law as part of the development of national law must be carried out comprehensively and continuously so that the rule of law remains relevant to the conditions of society. Analysis and evaluation of the effectiveness and currentness of the law need to be carried out continuously. In the process of legal analysis and evaluation, standard standards are needed based on the methods and principles of legal science against existing legal rules, not only to restore the substance of existing law, but also to improve other legal subsystems, such as legal structure and legal culture, as mentioned by Lawrence M. Friedman in his book *'The Legal System - A Social Science Perspective'* .

Evaluation of the legal rules will produce recommendations on whether the rules need to be changed, revoked, or maintained. This process is part of the ex-post legal analysis method carried out on legal rules that have been enacted in accordance with Article 7 of the PPP Law , including Laws/Government Regulations in Lieu of Laws,

²¹ Zulfikar Ardiwardana Wanda , Urgency of the Role of Legal Analysts after the Second Amendment to the Law on the Formation of Legislation , in <https://redaksi.duta.co/urgensi-peran-analis-hukum-pasca-perubahan-kedua-atas-undang-undang-tentang-pembentukan-peraturan-perundang-undangan/> accessed November 04, 2024

Government Regulations, Presidential Regulations, Provincial Regulations, Regency/City Regulations, and other types of legal rules as stipulated in Article 8 paragraph (1) of the PPP Law . This process requires competent experts in the field of legal science and the substance of legal rules, which can only be carried out by Legal Analysts so that the resulting rules remain relevant to the needs of the community.

The Legal Analyst position was first regulated in the Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform Number 18 of 2017 (Permen PAN-RB No. 18 of 2017) concerning Amendments to Permen PAN-RB No. 25 of 2016 concerning Nomenclature of Executive Positions for Civil Servants in the Government. In the attachment to the Permen PAN-RB, the Legal Analyst position becomes an executive position tasked with carrying out activities such as collecting, classifying, and reviewing to draw conclusions and prepare recommendations in the legal field.

After that, the role of Legal Analyst changed into a functional position of expertise which is a career position of a Civil Servant (PNS) in the field of law and justice based on Permen PAN-RB No. 51 of 2020 concerning the Functional Position of Legal Analyst (Permen PAN-RB concerning JF AH). The duties and functions of the Legal Analyst position based on Article 6 of Permen PAN-RB concerning JF AH are more complex, including conducting analysis and evaluation in the field of legislation and unwritten law, formation of legislation, legal problems, supervision of the implementation of legislation, agreement documents and implementation of agreements, legal services, licensing and legal information, and implementation of legal advocacy.

Of the 7 (seven) elements of activity, they are divided into several sub-elements and activity points as stated in the Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform concerning the Functional Position of Legal Analyst, where the implementation of the activity points is adjusted to the duties and functions/authorities in the work unit of the government agency where a Legal Analyst is assigned.

Methods of analysis and evaluation

In legal analysis and evaluation, several methods are used with the steps of inventorying data on regulations related to the issues that have been determined, including regulations of the colonial regime that are still in effect today. Related supporting data is also needed to complete the material, if any, in the form of: a) Decision of the Constitutional Court on the judicial review of the Law, b) Decision of the Supreme Court on the judicial review of regulations under the Law, c) Related international agreements, d) Results of legal and/or non-legal research, e) Results of legal and/or non-legal studies, f) Government policies, and g) Public input from seminars, workshops, *focus group discussions* , public discussions, and print and electronic mass media. Analysis and evaluation of related regulations are deepened by using the supporting data for further refinement.²²

²² Zulfikar Ardiwardana Wanda , Urgency of the Role of Legal Analysts after the Second Amendment to the Law on the Formation of Legislation , in <https://redaksi.duta.co/urgensi-peran-analis-hukum-pasca-perubahan-kedua-atas-undang-undang-tentang-pembentukan-peraturan-perundang-undangan/> accessed November 04, 2024

After completing the inventory process, the next step is to conduct an analysis of the laws and regulations using several assessment variables that refer to 6 dimensions, namely 1. Pancasila Dimension, 2. Dimension of Suitability of Types of Laws and Regulations, 3. Dimension of Potential Disharmony of Regulations, 4. Dimension of Readability of Formulations, 5. Dimension of Suitability of Norms with Material Principles, and 6. Dimension of Effectiveness of Implementation.²³

Accuracy in Law Enforcement in accordance with the Guidelines for Legal Analysis and Evaluation Number PHN-01.HN.01.03 of 2019.

The recommendation formula is made to provide solution options for problems in legal regulations, such as recommendations for changes, revocations, or replacements. This formula uses tools such as weighting the results of analysis and evaluation of the 6 (six) dimensions mentioned previously.

Synergistic Authority

After the ratification of the PPP Law - Second Amendment, the legal position of analysts has become stronger in their optional participation at every stage of the formation of legislation (outside after being enacted) based on the provisions of Article 98 paragraph 1a as needed. The authority of the Functional Position of Legal Analyst (JF Legal Analyst) and the Drafter of Legislation (JF Drafter) overlap in practice because both are part of the functional position group that is directly involved in the formation of state regulations.

The difference lies in the technical dimension of the drafting of concepts and substantive materials of legal regulations in relative terms. If the JF Designer focuses more on the technique of drafting regulations, while the JF Legal Analyst has a broader task, namely analyzing and evaluating the substance of written and unwritten regulations within the framework of national legal harmonization.

These two functional positions cannot be separated from each other, but complement each other in every stage of the formation of legislation in terms of formality and substance to achieve harmonization in the development of national law.

Legal Analysts play an important role in the process of making laws, starting from the planning, drafting, to evaluation and review stages. Their involvement at each stage is important to ensure that the laws that are formed are of good quality, coherent, and in accordance with the needs of the community.

Head of the National Legal Analysis and Evaluation Center of BPHN, Nur Ichwan emphasized that currently a Legal Analyst can not only be involved in the evaluation process of existing laws and regulations, but can also be involved in the process of forming laws and regulations as stated in Article 98 of Law Number 13 of 2022 which

²³ Zulfikar Ardiwardana Wanda , Urgency of the Role of Legal Analysts after the Second Amendment to the Law on the Formation of Legislation , in <https://redaksi.duta.co/urgensi-peran-analis-hukum-pasca-perubahan-ke-dua-atas-undang-undang-tentang-pembentukan-peraturan-perundang-undangan/> accessed November 04, 2024

states that in addition to the PUU Designer, the formation of laws and regulations can include Legal Analysts according to needs.²⁴

As a result, all laws and regulations must be evaluated as part of the regulatory arrangement plan that has been initiated by President Joko Widodo. The evaluation must use standard and scientific methods based on legal science so that the recommendations produced have accountable quality. Based on this, the National Legal Analysis and Evaluation Center associated with the National Legal Development Agency has the responsibility to conduct legal analysis and evaluation in accordance with the provisions contained in Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights and Regulation of the Minister of Law and Human Rights Number 29 of 2015 concerning the Organization and Work Procedures of the Ministry of Law and Human Rights of the Republic of Indonesia. Therefore, guidelines for evaluating laws and regulations need to be prepared.

PUU evaluation is the core work of legislative / *regulatory reform*. Through evaluation, the entire PUU is monitored and its implementation is evaluated. Through evaluation, an assessment is made whether a PUU is still relevant and has a positive impact on people's lives and whether its implementation does not cause problems. From the results of this evaluation, improvements and simplification of legislation can be made in the form of revocation, changes, or merging of PUU. *Omnibus*, which is one method of improving and simplifying legislation, will be preceded by evaluation activities. The results of the evaluation are also part of the PUU formation chain, namely as *feedback* for the preparation of new regulations. The National Legal Development Agency (BPHN) as an institution that has the authority in the field of PUU evaluation has developed a PUU analysis and evaluation method, namely by creating the 6 Dimensions of Legal Evaluation Guidelines. In addition, there is quite a lot of work related to evaluation produced by this institution. However, this evaluation needs to be encouraged to become a reference in every policy formulation and formation of PUU by stakeholders.

3. Results of Legal Analysis and Evaluation of Several Legislations

The evaluation results need to be submitted and explained to stakeholders, namely the Ministry of National Development Planning (PPN)/National Development Planning Agency (Bappenas); Directorate General of Legislation (Ditjen PP), Ministry of Law and Human Rights (Kemenkumham); Ministry of State Secretariat (Kemensekret); Coordinating Ministry (Kemenko); Cabinet Secretariat (Setkab); and other ministries/institutions (K/L). The submission is carried out whether requested or not. BPHN staff should be present in discussions and meetings regarding planning, preparation, discussion, harmonization of PUU, and also in the creation of other government policies.

The results of this evaluation should also be used as a basis for stakeholders to create larger policies, namely legislative reform. The reform can be in the form of a policy as a whole of legislation (nationally) or partial reform carried out on PUU in certain areas.

²⁴ BPHN Public Relations, BPHN Kapusanev Affirms the Strategic Role of Legal Analysts from Evaluation to Formation of Legislation, accessed at <https://bphn.go.id/berita-utama/kapusanev-bphn-tegaskan-peran-strategis-analis-hukum-dari-evaluasi-hingga-pembentukan-peraturan-perundang-undangan> accessed November 05, 2024

For comprehensive reform can be carried out by a large team, while partial reform can be implemented by each ministry and institution.

The concrete steps in conveying and explaining the evaluation results as described above are as follows:²⁵

- Connection Work National Development Planning Agency with Directorate General PP

The evaluation results are submitted by BPHN to the Directorate General of PP in relation to the draft PUU that is being prepared or revised. The evaluation results also need to be submitted to the harmonization forum to help ensure that the PUU being prepared is in accordance with the BPHN evaluation results.

- Working Relationship between BPHN and the Ministry of PPN/Bappenas

The evaluation results are the main basis for the preparation of the legislative framework that is prepared for the short, medium and long term. It seems that only BPHN has the task of comprehensive regulatory evaluation, while other ministries and institutions do it partially. Thus, the results of the BPHN evaluation will be very valuable for the preparation of planning made by the Ministry of PPN/Bappenas. The results of the analysis submitted to Bappenas should be comprehensive for all areas of government, namely political, legal and security affairs, economy, maritime affairs, and human and cultural development. From this evaluation, Bappenas can create *a grand design* for comprehensive legislative reform.

- Working Relationship between BPHN and Kemsetneg

The evaluation results submitted by BPHN to Kemsetneg can be used in the framework of finalizing the PUU determination process. To ensure that a PUU does not contain problems in its formation and implementation, it is necessary to ensure the effectiveness of its implementation in the field which can refer to the results of the BPHN evaluation.

- Working Relationship between BPHN and Kemenko

In resolving problems between ministries and institutions, as well as in the framework of coordination, the coordinating ministry requires data on field conditions from a policy or regulation. This requirement can be supplied by BPHN from the results of the PUU evaluation. The coordinating ministry in question includes the Coordinating Ministry for Politics, Law, and Security; Coordinating Ministry for the Economy; Coordinating Ministry for Maritime Affairs and Investment, and Coordinating Ministry for Human Development and Culture.

²⁵ Cabinet Secretariat Public Relations, Utilization of Evaluation Results of Legislation Regulations , quoted in : <https://setkab.go.id/pemanfaatan-hasil-evaluasi-peraturan-perundang-undangan/> accessed November 05, 2024

– Working Relationship between BPHN and Cabinet Secretariat

The results of the BPHN Evaluation can be input for the Cabinet Secretariat which has the function of providing policy recommendations for the president and vice president as well as in the context of organizing cabinet management. Good policies need to consider the results of the evaluation of the implementation of PUU in the field. In addition, the Cabinet Secretariat has the function of processing presidential approval of draft ministerial regulations and regulations of heads of institutions. The results of the BPHN evaluation can also be one of the considerations for the Cabinet Secretariat in providing recommendations to the president whether a draft ministerial regulation or regulation of heads of institutions is safe and appropriate to be stipulated.

– Working Relationship of BPHN with ministries and institutions

The results of the BPHN evaluation can be used as *feedback* and a comparison for the implementation of PUU in each ministry and institution implementing PUU in accordance with their fields of duty and function. Of course, the results of the evaluation must specifically provide recommendations on what ministries and institutions must do in order to implement PUU.

Based on Results Report Analysis And Evaluation Law related order manage government by Body Coaching Law National (BPHN) Ministry Law and human rights in 2020 , there are a number of The law that was carried out analysis And evaluation , including : Law Number 15 of 2006 concerning the Audit Board, Law Number 15 of 2004 concerning the audit of state financial management and accountability, Law Number 37 of 2008 concerning the Ombudsman, Law Number 25 of 2009 concerning Public Services, Law Number 5 of 2014 concerning the State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration, Government Regulation Number 42 of 2004 concerning the Development of the Corps Spirit and the Code of Ethics of Civil Servants, Government Regulation Number 60 of 2008 concerning the Government Internal Control System, Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, Government Regulation Number 11 of 2017 concerning Civil Servant Management, Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency.²⁶

However here We will A little to describe about results analysis And evaluation law to Law Number 15 of 2006 concerning the Audit Board . It is necessary to categorize the recommendations of the analysis and evaluation results of each regulation for follow-up. This categorization is based on: 1) the number of articles considered problematic; 2) the weight of the article assessment; and 3) the impact of the articles considered problematic. There are three categories of follow-up, namely: 1) Very Urgent, must be followed up immediately; 2) Urgent, follow-up needs to be planned and included in the

²⁶ BPHN, Analysis and Evaluation of Law Related to Governance, Jakarta, National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, 2020, pp. 13-111

list of Prolegnas/Progsun PP/Progsun Perpres; and 3) Not urgent, can still be maintained, but recommendations need to be noted for future changes.

Law Number 15 of 2006 concerning the Establishment of the Republic of Indonesia Audit Board (BPK RI) is regulated by Article 23 paragraph 5 of the 1945 Constitution, which in the Third Amendment to the 1945 Constitution is regulated in Chapter VIII A consisting of three articles (23E, 23F, and 23G) and seven paragraphs. These articles regulate the duties and functions, submission of audit results, follow-up of audit results, election of members, election of leaders, location and provincial representatives, and the possibility of further regulations by law.²⁷

Law Number 15 of 2006 concerning the Audit Board of Indonesia (UU BPK) is a further regulation that regulates the BPK RI in accordance with Article 23 E, 23 F, and 23 G of the Third Amendment to the 1945 Constitution, and also to implement Law Number 16 of 2004 concerning Audit of State Financial Management and Accountability. This BPK Law replaces Law Number 5 of 1973 concerning the Audit Board of Indonesia which is considered inconsistent with the development of the state system, both at the central and regional levels. The establishment of this BPK Law aims for the BPK RI to become a free, independent, and professional audit institution, so that it can provide a clean government free from corruption, collusion, and nepotism in the management of state finances. In the Lima Declaration, the independence of the BPK includes organizational independence from the executive, legislative, and judicial branches, independence of personnel in decision-making, independence in financial and budgetary matters, and independence in auditing state finances including state/regional taxes, non-tax state revenues, and banking.²⁸ During the 13 years of implementation of the BPK Law, there have been 5 judicial reviews to the Constitutional Court (MK), where one judicial review has been granted by the Constitutional Court through decision Number 13/PUU-XI/2013 which revoked Article 22 paragraph 1, paragraph 4, and paragraph 5 regarding the term of office of BPK RI members in interim replacements. Meanwhile, 4 other judicial reviews were rejected. In addition, there were several problems during the implementation of the BPK Law, both related to the law and the legal structure, which had a direct or indirect impact on the freedom, independence, and professionalism of BPK RI.

Based on the results of the legal analysis and evaluation of the BPK Law, several main problems were found, namely: a. Interim replacement of BPK members (Article 22); b. The need for a selection committee arrangement in the selection of BPK member candidates (not yet regulated in Article 14); c. Competency requirements and age limits for BPK member candidates (Article 13); d. The requirement not to be a member of the DPR for at least 2 years before registering as a BPK member candidate (Article 13); e. Collective collegial decision-making mechanism (Chapter II, part two). f. The authority of the BPK in conducting audits of BUMN and BUMD in the form of Limited Liability Companies (Article 6 paragraph 1). Based on the results of the analysis and evaluation, it

²⁷ BPHN, Analysis and Evaluation of Law Related to Governance, Jakarta, National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, 2020, p.17

²⁸ Sudin Siahaan, Towards the Ideal BPK, Jakarta: Prenada Media Group, 2012, p. 21.

is recommended to make changes to the BPK Law, especially to the articles that are being evaluated. The total recommendations for the BPK Law are 18 recommendations. The findings of problems in the BPK Law are very important, because they cover the dimensions of Pancasila (2 findings have a significant impact), potential disharmony (5 findings have a significant impact), effectiveness of implementation of laws and regulations (6 findings have a significant impact), and clarity of formulation (5 findings have a significant impact). The number and impact of these findings indicate that the follow-up to the amendments to the BPK Law is very urgent, so it must be followed up immediately and included in the National Legislation Program for the 2020-2024 Draft Law and the National Legislation Program for the 2020 Priority Draft Law.²⁹

IV. CLOSING

1. Conclusion

- a. The position of evaluation of statutory regulations is an inseparable part of the process of forming statutory regulations in accordance with the provisions in the considerations of 'consideration' and the General Explanation of the Law on the Formation of Statutory Regulations. The actions that must be taken to evaluate statutory regulations are: Collecting information on the implementation of the evaluation of laws and regulations , After taking inventory, the next step is to evaluate the laws and regulations using six dimensions that have several variables and assessment indicators, and Compiling Recommendations . Analysis and evaluation guidelines are part of the manifestation of absolute legal affairs and must be applied to the regional level. This can be applied to the regions because the provisions of Article 95A of Law No. 13/2022 are included in the chapter title "Consolidation and Review of Laws".
- b. PUU evaluation is the core work of legislative /*regulatory reform*. Through evaluation, the entire PUU is monitored and its implementation is evaluated. Through evaluation, an assessment is made whether a PUU is still relevant and has a positive impact on people's lives and whether its implementation does not cause problems. From the results of this evaluation, improvements and simplification of legislation can be made in the form of revocation, amendment or merging of PUU.
- c. The evaluation results need to be submitted and explained to stakeholders, namely the Ministry of National Development Planning (PPN)/National Development Planning Agency (Bappenas); Directorate General of Legislation (Ditjen PP), Ministry of Law and Human Rights (Kemenkumham); Ministry of State Secretariat (Kemensek); Coordinating Ministry (Kemenko); Cabinet Secretariat (Setkab); and other ministries/institutions (K/L). The submission is carried out whether requested or not. BPHN staff should be present in discussions and meetings regarding planning, preparation, discussion, harmonization of PUU, and also in the creation of other government policies. The results of this evaluation should also be used as a basis for stakeholders to make larger policies, namely legislative reform. Such as the results of the legal analysis and evaluation of the BPK Law by BPHN, namely the findings of problems in the BPK Law are very important, because they include the dimensions of Pancasila (2 findings have a significant impact), potential disharmony (5 findings have a significant impact), effectiveness of the

²⁹ BPHN, Analysis and Evaluation of Law Related to Governance, Jakarta, National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, 2020, pp. 19-20

implementation of laws and regulations (6 findings have a significant impact), and clarity of formulation (5 findings have a significant impact).

2. Suggestion

It is necessary to build regulations again in conducting analysis and evaluation of laws and regulations, towards the incumbents. And the results of recommendations and suggestions in the results of analysis and evaluation must be used as a basis for improving a law and regulation.

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