

# Legal Politics for the Establishment of Regional Regulations in Realizing the Development of the National Legal System

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**Abstract:** *The purpose of this research is to analyze and discover the nature of the Political Law for the formation of regional regulations relating to the determination of the direction and content of regional regulations in realizing the development of Indonesia's national legal system, to analyze and find the concept of the Political Law for the formation of regional regulations that can realize the development of Indonesia's national legal system, and to explain and discover the factors that influence the Politics of Law Establishment of Regional Regulations as a means of justification and understanding of government policies in realizing the development of Indonesia's national legal system.*

**Keywords:** Political Law, Regional Regulations, Legal System

## 1. Introduction

Political law (Rechtspolitiek)<sup>1</sup> as a stand-alone field of science is relatively new. In its development lately it has received considerable attention, especially in relation to the establishment of legislation.<sup>2</sup> At the level of regional government in relation to the formation of regional regulations, the legal politics for the formation of regional regulations are important and very needed so that legal products and / or products of legislation are in accordance with changes and developments in the legal needs of the community.<sup>3, 4, 5</sup>

The legal politics of establishing regional regulations as part of legal politics<sup>6</sup> is to investigate changes in what must be done in law and / or regulations for the formation of regional regulations so that regional regulations will or are being made in accordance with the demands of changing society, legal feelings of society and community legal needs of each local government in the national legal system.

Legal politics<sup>7</sup> related to the formation of regional regulations is the center of attention because lately local governments in the framework of implementing regional autonomy are increasingly creative in making regional regulations and regional regulations that are part of the national legal sub-system allegedly burdening the public and contradicting statutory regulations higher law, even in many cases it is considered not in accordance with the legal needs

<sup>1</sup>So far it can be traced that legal politics (*rechtspolitiek*) was introduced in the Netherlands in 1953 by Bellefroid in his book *Inleiding tot de Rechtswetenschap in Nederland. Rechtspolitiek* which is translated as legal politics. According to Bellefroid, legal politics is a part of the law that investigates what changes must be made in the current law to meet the new requirements of human life. He continued the development of legal order in which he tried to make *ius constutendum* developed from a legal system that had long been an *ius constituendum* or law for the future.. In Latif, Abdul, and Hasbi Ali. *Politik Hukum*. Jakarta: Sinar Grafika, 2010, p. 6.

<sup>2</sup>Compare Latif's opinion, that new legal politics was taught in 1996 (in Indonesia) .... The law itself is a form of legal politics. In other words, legal politics provides the basis for more appropriate legal processes, situations and conditions, culture, and values that develop in society by paying attention to the needs of the community for the law itself. *Ibid.* p. 19.

<sup>3</sup>This is in line with the opinion of A. Muin Fahmal in a legal political lecture on July 30, 2010 specifically given to promovendus, saying that legal politics is a political message, politics will be manifested in the form of norms (law) is a form of law or legal regulation. Then legal politics is proposed to answer a number of questions regarding existing laws: (1) what political message is manifested in the form of norms (law); (2) what goals are to be achieved in connection with the first question; (3) whether the purpose in point two is for the people or for the ruling elite. If the purpose is for the people, then legal politics is positive/good. What are the criteria for knowing that legal politics is for the people, very much depends on whether legal politics are formulated from the values needed by society.

<sup>4</sup>Next, A. Muin Fahmal said that in the current era of autonomy, what is highlighted is not people's welfare but political interests, so that trust seems to be a rare item, even the example is increasingly difficult to find in the practice of government ... in Fahmal, A. Muin. *Peran Asas-Asas Umum Pemerintahan Yang Layak Dalam Mewujudkan Pemerintahan Yang Bersih*. Yogyakarta: Kreasi Total Media, 2008, p. 6.

<sup>5</sup>Furthermore, A. Muin Fahmal expects the law as the basis of the life of the country, only possible if political will (*rechts politiek*) is taken from the public, in Fahmal, A. Muin. "Political Will Instrumen Hukum Pemerintahan Yang Bersih (Clean Government)." *In Wisuda Sarjana Universitas Tompotika Luwuk*, May 28, 2009, p. 16.

<sup>6</sup>According to F. Sugeng Istanto, Professor at Gadjah Mada University, states that from various notions of the development of legal politics, it appears that legal political ideas can be grouped into three groups of understanding, namely: Legal legal translations from reconciliation, legal politics not policy translation, and legal politics that discuss policy public. Furthermore, in his explanation, legal politics was further divided into political terms of material law and formal legal politics, in Istanto, F. Sugeng. *Politik Hukum*. Mata Kuliah. Yogyakarta: Universitas Gajah Mada, 2005.

<sup>7</sup>Compare Padmo Wahyono's opinion, that legal politics is a basic policy that determines the direction, form and content of the law to be formed, in Tanya, Bernard L. *Politik Hukum: Agenda Kepentingan Bersama*. Yogyakarta: Genta Publishing, 2011, p. 3.

of the community. In the case of the conception of the national legal system, regional regulations should not conflict with higher laws and regulations, and the regional regulations made must be in accordance with the legal needs of the local community in the area.

The politics of law<sup>8</sup> has the task of realizing the goals of the state, a common goal, namely to realize public welfare as promised in the fourth paragraph of the Preamble of the 1945 Constitution. Therefore, the stipulated legal politics are expected to present laws and regulations in its essential form guarantees fair regulation, provides legal certainty and distributes benefits to all aspects of life and society. However, the legal politics of establishing regional regulations that have been established so far in terms of concepts and their actualization in the formulation of laws and / or regional regulations have not been able to fully present regional regulations that can guarantee more equitable regulation, have not yet fully provided legal certainty, not yet can fully distribute benefits to all aspects of life and society.

## 2. Statement of the Problem

Based on the description of the background of this research, research problems can be formulated, as follows:

- a) What is the nature of the Political Law for the formation of a Regional Regulation in realizing the development of Indonesia's national legal system?
- b) What is the Political Law for the formation of Regional Regulations that can realize the development of Indonesia's national legal system?
- c) Factors affecting the Politics of Law Establishment of Regional Regulations as a means of justification and understanding of government policies in realizing the development of a national legal system?

## 3. Theoretical Framework

### a) Theoretical Basis

According to Padmo Wahjono<sup>9</sup> that in every democratic country it should be a sovereign. However, the people's sovereignty was represented by parliament. The way the parliament operates the people's sovereignty is to make laws as a law (general regulation) that applies to all nations in the country concerned. Thus what appears in the country is not people's sovereignty but legal sovereignty. Countries that place the law in a sovereign position are called the rule of law.

In this study the grand theory to be used is the State Theory of democratic law, then the middle theory that will be used is the legal system theory. and applied theory will be used by regional government system theory and configuration of regional government systems.

The use of the theory of democratic law states as a grand theory because the politics of law will not be able to realize the development of a national legal system if it is not in accordance with the principles of a democratic rule of law. The legal system theory is used as a middle theory based on the understanding that legal politics in the formation of legislation as a unity of the legal system greatly determines the realization of the development of a national legal system. Government system theory is used as an applied theory because the configuration of government relations with regional governments on the one hand and functional relations between legislative and executive institutions in the formulation of legal politics of legislation will affect the purpose and nature of legal functions (legislation. Another democratic system of government will open the possibility of the birth of legislation that can accommodate all community interests (responsive).

### b) Principle of Forming Legislation

Laws and Regional Regulations can function optimally as one of the instruments of the rule of law which is highly dependent on the legal politics of a country. The politics of law that optimizes laws as instruments of state law should be supported by good legislative principles. The principle was collected by experts and systematically, which was re-quoted by Hadjon, as a general principle of good legislation:<sup>10</sup>

- The principle of purpose is clear;
- The principle of the right institution;
- The principle of the need for regulation;
- The principle that legislation can be implemented;
- Consensus principle;
- Principle of clarity of terminology and systematics;
- The principle that legislation is easily recognized;
- The principle of equality;
- Principle of legal certainty;
- The principle of law enforcement is in accordance with individual circumstances;
- The principle must respect reasonable expectations.

In Indonesia with the system of checks and balances outlined in the 1945 Constitution, attention towards the principles of good legislation should be improved. Moreover, the 1945 Constitution system which entrusts various aspects of state life to the regulation by law has placed the law in a very strategic position within the legal state of the Republic of Indonesia. Is our law going to be a law of refraction or autonomous law or is responsive law highly dependent on legal politics and the principles of legislation adopted.

Next, I.C. van der vliet divides the principles in the formation of good state regulations (beginselen van behoorlijke regelgeving) into formal and material principles.<sup>11</sup>

<sup>8</sup>Compare the opinion of Moh. Mahfud M. D., that the notion of legal politics as a translation of legal policy includes the process of making and applying laws that can show the nature of the direction in which the law will be built ... in Moh. Mahfud, M. D. *Politik Hukum Di Indonesia*. Jakarta: LP3ES, 1998, p. 9.

<sup>9</sup> Wahjono, Padmo. *Negara Republik Indonesia*. Jakarta: Rajawali Pers, 1986, p. 66.

<sup>10</sup>Hadjon, Philipus M. *Algemene Beginselen Van Behoorlijk Bestuur*. Bogor: Lembaga Penelitian dan Pengembangan Hukum Administrasi Negara, 1994, p. 7.

<sup>11</sup>Soeprapto, Maria Farida Indrati. *Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muatan*. Yogyakarta: PT. Kanisius, 2007, pp. 253-254.

Formal principles include: (1) the principle of clear objectives (*beginsel van duidelijke doelstelling*); (2) the principle of the right organ / institution (*beginsel van het juiste orgaan*); (3) the principle of the need for regulation (*het noodzakelijkheids beginsel*); (4) the principle can be carried out (*het beginsel van uitvoerbaarheid*); (5) consensus principle (*het beginsel van consensus*).<sup>12</sup>

Material principles include: (1) the principle of correct terminology and systematics (*het beginsel van duidelijke terminology en duidelijke systematiek*); (2) the principle of being recognizable (*het beginsel van de kenbaarheid*); (3) the principle of equal treatment in law (*het rechtsgelijkheid beginsel*); (4) the principle of legal certainty (*het rechtszekerheids beginsel*); (5) the principle of law enforcement according to individual circumstances (*het beginsel van de individuele rechtsbedeling*).<sup>13</sup>

### c) Legislation Principles (Principles of Applicability of the Law)

In connection with the enactment of the law, several legal principles are known as follows:

- The law does not apply retroactively;
- The applicable law then overturned the previous law;
- Laws made by higher authorities have a higher position as well;
- Special laws override general laws;
- The law can be tested whether the content is contrary to the Constitution or not;

### d) Legal System Theory

#### System Theory and the Legal System

System theory born from the post-cartesian science method is the history of human intellectual exploration in finding the most appropriate way to study a complex entity (complex entity or system) is an organic method which is later better known as a system methodology.<sup>14</sup> Menenius Agrippa, in Ancient Rome had used this method to explain the nature of the state. He states the state as a living entity, as a whole as a whole, and as a unity composed of various inseparable parts.<sup>15</sup> In line with that thought, according to Hans Kelsen that the state is nothing but a legal building.<sup>16</sup> Therefore, it can be ascertained that all legal products produced by formal legal sources (made by state-legislation) are all a system.<sup>17</sup>

#### Law as a System

Law as a system by Hans Kelsen sees the legal system as a pyramidis structure. Reject the base of his theory is the basic validity and legal (legaliteit) proposition, something that rules / rules lies in a higher rule / rule.<sup>18</sup> Hans Kelsen as the

main character of positivism-law sees as mere order, law as a logical system. Law as a systematic building, a law of an orderly system, which is linear, mechanistic, and deterministic.<sup>19</sup> In relation to the hierarchy of legal noma, Hans Kelsen put forward a theory about the norm level (Stufen theorie). Hans Kelsen argues that legal norms are tiered and layered in a hierarchy (arrangement), in the sense that a lower norm applies, sourced and based on a higher norm, and so on until a norm is not can be traced further and is hypothetical and fictitious, namely the basic norm (Grundnorm).

### Legal System and Legal Development

In general, it can be formulated that the system is something that consists of elements that interact with each other to achieve certain goals.<sup>20</sup> System theory as an approach to achieving the goal gives emphasis from the essence of the system from one entity,<sup>21</sup> that is, **first**, the system is a complexity of elements formed in a single unit of interaction (process); **second**, each element is bound together in an interdependence of its parst; **third**, the unity of the complex element forms a larger unit, which encompasses all of its constituent elements; **fourth**, the whole determines the characteristics of each part of its formation; **fifth**, that part of the whole cannot be understood separately from the whole; sixth, the parts move dynamically independently or as a whole in that whole (system).

#### • National Legal System and Legal System

Speaking of the legal system in relation to the national legal system, of course it is intended to be a positive Indonesian legal system, namely a legal system that applies in Indonesia. The system as previously stated, is generally interpreted as a unit consisting of elements that are related to each other and affect each other so that it is an overall and meaningful.<sup>22</sup> If Indonesian positive law is interpreted as a whole of principles and rules that govern human life in society, then the elements of positive Indonesian law are: (1) Laws or legislation along with the principles relating to them; (2) Habits including customs that have been accepted as law; (3) Court Decisions that have fixed powers; (4) Treaty or international agreement.<sup>23</sup>

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>Rasjidi, Lili, and I. B. Wyasa Putra. *Hukum Sebagai Suatu Sistem*. Bandung: CV. Mandar Maju, 2003, pp. 1-5.

<sup>15</sup>Menenius Agrippa said "... state, like a living body, is whole; and just as the parts of the body, are interrelated and require each other's pre-sence, ..." *Ibid.*, p. 52.

<sup>16</sup>Rahardjo, Satjipto. *Negara Hukum Yang Membahagiakan Rakyatnya*. Yogyakarta: Genta Publishing, 2009, p. 6.

<sup>17</sup>Latif, Abdul, and Hasbi Ali. 2010. *Op.Cit.*, p. 42.

<sup>18</sup>Wignodipoero, Soerojo. *Pengantar Ilmu Hukum: Himpunan Kuliah*. Jakarta: Gunung Agung, 1982, p. 99.

<sup>19</sup>Ali, Achmad. "Catatan Hukum Akhir Tahun 2000, Memasuki Tahun 2001: Hakikat Ilmu Hukum Dan Solusi Keluar Dari Keterpurukan Hukum." In *50 Tahun Usia: Karya Pilihamnya Dan Komentar Berbagai Kalangan Tentang Achmad Ali*. Indonesia, 2002, pp. 23-55.

<sup>20</sup>Wiko, Garuda. "Pembangunan Sistem Hukum Berkeadilan." In *Memahami Hukum: Dari Konstruksi Sampai Implementasi*, edited by Satya Arinanto and Nunuk Triyanti. Jakarta: Rajawali Pers, 2009, p. 9.

<sup>21</sup>Rasjidi, Lili, and I. B. Wyasa Putra. 2003. *Op.Cit.*, p. 65.

<sup>22</sup>Kusumaatmadja, Mochtar, and Bernard Arief Sidharta. *Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*. Vol. 1, Bandung: PT. Alumni, 2000, pp. 121-133.

<sup>23</sup>*Ibid.*, p. 122.

### • Hierarchy of Legislation in the Indonesian Legal System

Basic norms which are the highest norms in a norm system are no longer formed by a higher norm, but the basic norms are determined by the community as a basic norm which is a hanger for the norms that are below it, so that a basic norm it is said to be presupposed.<sup>24</sup> The first legislation called the position is higher than the legislation called the second, and so on. The position of the higher laws and regulations in this case means that lower statutory provisions must refer to legislation that has a higher position. In addition, if there is a conflict between the provisions of legislation that is lower than the provisions of the legislation that has a higher position must be prioritized.

### • National Law Legal and Political System

The legal system and the national legal system have a close relationship with legal politics. Understanding of legal politics related to the national legal system is the practical application of legal concepts to achieve political goals (state goals) that use concepts, understanding and ways of action such as: (1) law as a system of rules and principles - formal (normative), and (2) institutions and processes used in realizing the law into real life (normative sociology), (3) law as a social phenomenon in the context of sociological-cultural studies (socio-cultural context).<sup>25</sup> The politics of national law by Muchtar Kusumaatmadja suggested that it should be mutually agreed upon and for the sake of certainty to be promulgated in the form of a law concerning the basic provisions of law and legislation<sup>26</sup>, although several things have been contained in the law concerning the basic provisions of the judiciary.

### • Perda As Political Products

Perda is a political product, because the Perda is made by political institutions, namely the DPRD together with Eksekurif (Regional Government). Therefore, regional regulations are the result of work (political products) in the region. In this context the legal substance of the Regional Regulation will be determined by pulling back the interests of the two political institutions, so that the law of the Regional Regulation will eventually be messages of political will from a texture of political constellation or regional government structure. The texture of political poetry or certain regional government structures (democratic / authoritarian) will result in the character of certain regional regulations (responsive / elitist, orthodox).<sup>27</sup> Ideally, the Regional Regulation Products must reflect the wishes and desires of the people or in other words Perda is the crystallization of people's aspirations in order to improve service and community welfare (responsiveness) with the consequence that the DPRD should act more as a

justification of the people's will. The DPRD must dominate the executive in the process of establishing a Regional Regulation. Based on this perspective, this study will focus on legal politics in the formation of local regulations in Indonesia by conceptualizing and determining certain indicators. In this study, legal politics placed on the part of legal science is not part of political science. This statement follows the view that legal politics is part of political science. The word Politics in legal politics is defined as legal policy, not politics in terms of ways to obtain power. Even though in reality the nature of the legal function is an instrument of power (power politics), but it is still seen as a form of product of political institutions (DPR, DPD, DPRD and President, Governor, Regent / Mayor) which are manifested in legal (legal policy). The concrete form of the legal policy is legislation, namely: Law / Perpu, Government Regulation, Presidential Regulation, Perda, Perdes. So, as Mahfud MD argues that if law is likened to a tree, then philosophy is the root, while politics is the tree which then gives birth to branches in the form of various legal fields such as civil law, criminal law, state law, state administrative law. In this context, the underlying argument is that legal politics is part of legal science.

Departing from the assumption that law (read-Perda) is a political product, the basic question that needs attention is the causal relationship between law and politics. Do laws affect politics or politics that affect the law? In looking at the relationship between law and politics, Sri Soemantri Martosoewigjo<sup>28</sup> took an example that if the law was likened to a rail and politics was likened to a locomotive, it would often be seen that the locomotives came out of the tracks that were supposed to be passed. Furthermore, Soehadjo saw law and politics as two dark sides. According to Soehardjo<sup>29</sup> stated in his paper entitled "Judicial Power and Judicial System Based on the 1945 Constitution", An Analysis of the IKAHl Memorandum On October 23, 1996, said that "... between law and politics are partners, if the law is associated with recht, politics is associated with macht, thus the relationship between the two is expressed as ... recht bendichte werking des macht, nicht macht bendichte werking des recht ... (the law that forms power and not the power that forms the law)<sup>30</sup>

Then Moh. Mahfud MD. argues that regarding the relationship between political law there are actually three underlying assumptions. First, the law of determinants of politics in the sense that the law must be the direction and control of all political activities. This assumption is used as the das sollen foundation (desire, necessity and mind). Second, political determinants of law in the sense that in

<sup>24</sup>Soeprapto, Maria Farida Indrati. 2007. *Op.Cit.*, p. 41.

<sup>25</sup>Kusumaatmadja, Mochtar, and Bernard Arief Sidharta. 2000. *Op.Cit.*, p. 124.

<sup>26</sup>*Ibid.*, p. 127.

<sup>27</sup>See also (compare) Moh. Mahfud M. D.'s statement that "In empirical reality, the presence of law is a reflection of the political configuration behind it. the provisions contained in the rule of law are only the crystallization of competing political desires. In the debate it appears that politics determines the way law works." in Moh. Mahfud, M. D. *Pergulatan Politik Dan Hukum Di Indonesia*. Yogyakarta: Gama Media, 1999, pp. 69-86.

<sup>28</sup>Syaukani, Imam, and A. Ahsin Thohari. *Dasar-Dasar Politik Hukum*. Jakarta: Rajawali Pers, 2006.

<sup>29</sup>Moh. Mahfud, M. D. 1999. *Op.Cit.*

<sup>30</sup>Compare with Moh. Mahfud M. D. namely, First: the law determines politics in the sense that political activities are regulated and must be subject to the rule of law. Second: politics is subject to the law because law is the result or crystallization of political will that interacts and (even) competes with each other. Third: politics and law as social subsystems are in a position where the degree is balanced with each other. Law is a product of political decisions, but once the law exists, all political activities must be subject to the rule of law, in Moh. Mahfud, M. D. 1998. *Op. Cit.*, p. 8.

reality both normative products and the implementation of law enforcement are strongly influenced and become dependent to the variables of politics. This assumption is used as the basis of *das sein* (reality, reality) in empirical legal studies. Third, politics and law are interdependent or interdependent relationships that can be understood from the adage that politics without law creates arbitrariness or anarchism, law without politics will become paralyzed.

#### 4. Discussion

##### a) The Basics and Patterns of Politics that Will Be Developed

Factors that influence legal politics in the formation of regional regulations as a means of justification and understanding of policies in establishing applicable laws in realizing the development of national legal systems are: (1) Political basis and pattern to be built, (2) Changes in people's lives, (3) Community structure, (4) Global trends. The factors that influence the legal politics of the formation of regional regulations in realizing the development of this national legal system will be a means of understanding / justifying government policies why the rules for the formation of regional regulations are made, namely (a) the state of society when making decisions (c) the state of the law applicable at the time of decision making.

Legislation including regional regulations will basically reflect the most influential various political thoughts and policies, which can be derived from certain ideologies such as the doctrine of socialism and the doctrine of capitalism. The doctrine of socialism will be different from the doctrine of capitalism in providing understanding and application of democracy both in terms of its substance and its technical implementation. Capitalist doctrine requires legal products that prioritize legal certainty and provide more protection to rulers and investors.

The basis for the transfer of democracy based on the ideology of socialism places the collective interest above the interests of individuals in relation to the administration of government. Conversely, the basis of democratic ideology based on capitalism is individual freedom above all else. Although these two ideologies have different rationale but in their implementation, both can trigger the birth of government and democratic legal products and / or government and non-democratic (authoritarian) legal products.

The politics of law in democracies will try to provide broad opportunities for community participation to determine the desired style and content of the law. Whereas dictator countries will always avoid public participation in determining the style and content of the law.

The Indonesian state has a different perspective and way of thinking than socialist doctrine and capitalist doctrine. The Indonesian state has its perspective and thinking in accordance with the basic philosophy of the state namely Pancasila and kinship will have its own legal politics in accordance with the ideals of the law (*rechtsidee*), contained in Pancasila and the 1945 Constitution of the Republic of Indonesia

In the framework of the "*staatsidee*" or "*rechtsidee*" paradigm, there will be 3 (three) levels of legal politics in the formulation of legislation including the Establishment of Regional Regulations, namely: (1) At the political level, the goal of Indonesian legal politics is the establishment of a democratic law; (2) At the social and economic level, legal politics aims to realize welfare and social justice for all Indonesian people; (3) At the normative level, legal politics aims at establishing justice and truth in every aspect of people's lives.

Pancasila as a prismatic concept seeks to bring together integratively the good aspects of various concepts that are seen as contradictory. In relation to the legal politics of the formation of regional regulations, Pancasila is positioned aside from being a moral reading, the guide is also a frame of Indonesia's national legal system. Therefore, the Indonesian national legal system or can be mentioned with the Pancasila legal system is different from the Continental European legal system which only emphasizes legism, civil law, administration, legal certainty and written laws whose legal state is called *Rechtsstaat*. The national legal system (the Pancasila legal system) is also different from the Anglo Saxon legal system which only emphasizes the judicial, common law role and the substance of justice whose legal state is called the Rule of Law.

In the Indonesian national legal system, Pancasila as the ideology and source of all legal sources will be signs and filters in national legal politics, including in the formation of regional regulations as a sub-system of national law. Common signs and filters are prohibited from the birth of regional regulations that contradict Pancasila values. Perda must not conflict with divine values, and religious religion, Perda must not conflict with human values and human rights, Perda may not threaten or potentially damage the integrity of the ideology and territory of the nation and state of Indonesia, there should be no Regional Regulation violating the principle of sovereignty and there must be no Regional Regulation that violates the values of social justice. The point is that the contents of regional regulations must be in accordance with the values of Pancasila.

It is well aware that in the implementation of the Pancasila concept as a prismatic concept in the formation of regional regulations as part of the national legal sub-system, they will always face each other and resist each other with other social interests and values such as the doctrine of capitalist / liberal ideology and the doctrine of socialism. enter the life of the nation and state through the thoughts of the organizers of the country and politicians and the thoughts of entrepreneurs (big investors), thoughts of pressure groups such as NGOs that also determine and influence legal policy both at the central government level and at the regional government level.

Past experience in the process of democracy (Election) to seize power as a ruler / government in Indonesia is inseparable from the struggle of various interests and social values such as liberal doctrine, individualism, capitalism and socialist doctrine, collectivism on the one hand with the Pancasila doctrine as a concept prismatic on the other side.

The winners of the democratic process are the representation or representation of one of the doctrines of thought or a combination of variations from several doctrines of thought which in the course of the government concerned will be colored by the way they think, including in making legal policy.

In the history of the journey of the Indonesian people recorded three phases of legal development associated with the existing leadership system. The phase began with the leadership of President Soekarno, the new order, and the current reform era. The needs of the Indonesian people today are to take and consolidate the good things from the three periods to create a point of stability.

During the Soekarno administration the formation of the law was marked by the number of emergency laws to overcome the problems that arose in the revolutionary period. Therefore the law is more oriented towards the formation of national character. Whereas in the New Order period, the law was directed towards order and order. At that time, the 1945 Constitution was never amended but gave birth to many MPR TAPs for structuring state institutions and patterns of relations between these institutions. The formation of law is more dominated by the government as a legal policy maker, while academics, observers, the community have little place.

In the current reform era, the opposite happens, precisely academics, observers, the wider community including NGOs tend to be more influential. The government as the policy holder can no longer feel the smartest. While in the life of the state, the coordinates between state institutions break up and hover, each trying to find a place and position that is profitable. In such an atmosphere, it is our responsibility to return to the right position. The way back to the goal of the state which was formulated by the founding father as formulated in the fourth paragraph of the 1945 Constitution.

In addition to the ones stated above, it is also necessary to pay attention to the political bases and patterns that are to be built in relation to the conflict between national interests (Unity-unity) and the interests and social values (local wisdom) in regions that want diversity (Pluralism) will also influencing legal policies for the establishment of regional regulations as part of the national legal system, related to the determination of the contents of the regional regulations, the form and arrangement of regional regulations in the national legislation system, methods and processes and procedures for establishing regional regulations.

For those who have liberal capitalist thinking, it is almost certainly not too much of a question. The most important thing for them is the continuity of their power and effort. But when their power and business interests are undermined, they immediately rely on temporary power because they are part of the power and can say something of agreement or rejection or state that certain local regulations contravene higher laws and regulations to the government depending on their consideration. profitable for their group or not profitable.

In the case of cancellation of the Perda with reasons that contravene the higher laws and regulations, it must be more careful and observant to see whether this is true, because this concerns the issue of valuation, the results of the assessment will depend on indicators or ways of thinking to say that it contradicts higher laws and regulations. It can happen not because it contradicts higher laws and regulations, but the regulation complies with the needs of the community but is not profitable for the group and is considered to hinder investment. In a looser, legal way of thinking (Perda) is considered good when the law (Perda) is in favor of the interests of investors and individual social values.

The question that then arises is whether the Regional Regulations are in contradiction with the national legal system? does the Perda conflict with the higher legislation or the higher regulations which are contrary to the principle of implementing regional autonomy? If there are higher regulations such as the Presidential Regulation or Presidential Decree and Ministerial Decrees / Regulations that are contrary to the principle of implementing regional autonomy, then a higher level of regulation must be defeated by using the ultra vires principle. This is done, in addition to making the implementation of regional autonomy effective in order not to safeguard higher regulations such as Presidential regulations, Presidential Decrees and Ministerial Decrees being used as shields for capital managers in protecting their business interests which are solely to gain economic benefits without being too concerned. the lives of people who are socially and economically weak.

To solve this problem, the Regional Regulations can be measured by a guiding principle that must be guided as a rule in politics and legal politics in the formation of regional regulations as part of national law. **First**, the Regional Regulation as part of the national legal sub-system must maintain integration both ideological and territorial territory of Indonesia. The law that is expected to emerge is a law that protects all nations and the entire bloodshed of Indonesia. It should be avoided the birth of regional regulatory law products that have the potential to divide the integrity of the nation and state of Indonesia, including discriminatory laws based on primordial bonds.

**Second**, the Regional Regulation as a sub-national legal system must be democratically and nomocratic in the sense that it must invite participation and absorb the aspirations of the wider community through procedures, mechanisms that are fair, transparent and accountable. It must be prevented from the birth of regional regulation legal products that are processed cunningly, only to meet the interests of certain groups.

**Third**, Perda as a sub-national legal system must be able to create social justice in the sense that it must be able to provide special protection to the weaker groups in dealing with strong groups (investors) both from outside and within their own country.

**Fourth**, the Regional Regulation as a sub-national legal system must guarantee religious freedom with full tolerance among adherents. The state or local government may regulate religious life to the extent of maintaining order so

that conflict does not occur and facilitate so that everyone can carry out his religious teachings freely without disturbing or being disturbed by others. There should be no privilege to treat religion only because it is based on the size and size of its followers. Religious law does not need to be enforced by the state because the implementation of religious teachings is left to each of its followers. The state can only regulate its implementation by the respective adherents to guarantee freedom and maintain order in its implementation.

In addition to the guiding principles of law as a filter in the formation of legislation, including the establishment of regional regulations, especially to maintain the consistency of local regulations with higher regulations according to the legal system built, action can be taken; **First**, the refresive action or cancellation of the Perda in accordance with the provisions of Article 145 of Law Number 32 Year 2004 concerning Regional Government, that direct Regional Regulations can apply without having to request prior authorization to the central government. Within a period of no later than 7 days after the enactment, the Regional Regulation must be submitted to the central government and within 60 days of being submitted the central government can cancel it with a Presidential Decree if the regulation is considered contrary to the guiding rules which are hierarchically contained in legislation higher. In addition, there are local regulations that can only be applied after obtaining central government approval (Regional Regulation on Regional Budget, Regional Retribution, Regional Taxes and Regional Spatial Planning). Through this mechanism many local regulations are canceled by the central government. Data from the Ministry of Home Affairs, in the period from 2002 to 2009 there were 7500 Regional Regulations evaluated, 3,063 Regional Regulations requesting cancellation, 1064 Regional Regulations canceled, 1,999 Regional Regulations in the process of cancellation.

**Second**, a judicial review of the questioned Regional Regulation to the Supreme Court (MA) so that it is declared invalid or canceled. In Article 24A paragraph (1) of the 1945 Constitution and Article 11 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power, the Supreme Court has the authority to examine legislation under the law against the law, while according to Article 31 paragraph (2) Law Number 5 of 2004 concerning the Supreme Court, states that the Supreme Court has the authority to declare illegitimate laws and regulations under the law for reasons contrary to the higher laws or the establishment does not meet applicable regulations.

**Third**, through the preparation of the regional legislation program (Prolegda). The plan to establish a Perda for each region is set out in Prolegda. It is through this prolegda that the selection is carried out on materials that can be interpreted by the Regional Regulations based on legal guiding principles and rules that are in accordance with the national legal system, namely the system of national law and national law formation systems. The system of contents of national law will be determined by the principles of law reflected in Pancasila as a guide in the formation of law, including in the formation of regional regulations.

### A. Changes in Community Life

Change is a state of something different from the previous situation. Society is a relationship between humans who are constantly hypnotic. Changes in society can occur in changing people's thinking as members of the community concerned, the life needs of members of the community concerned, and the way of life of members of the community concerned.

Changes in people's lives can spread to all areas of life in the community concerned. Changes in a field of community life can also affect other areas of life including the field of legal life. The field of legal life is a field of life that strives to fulfill the needs of a more secure, useful and just life.

In modern society changes in society are changes that are planned / planned. In changing society, law is one of the instruments of change in people's lives, but law is not the only instrument of community change. There are other components which are also instruments of community change such as; political. Economy, social and culture. Therefore, in reviewing law as an instrument of change the community must also understand the interrelationship of the law with other instruments such as; political, economic, social and cultural. However, it must be remembered that as an instrument of community change, law is an instrument that has advantages over other instruments. Law is a powerful tool, because law is a tool that can enforce its decisions. Thus, the law as an instrument for changing people's lives when used properly will be a very useful instrument for the community. But if used inappropriately, the law will be a dangerous instrument for people's lives.

The legal relationship with the change of society is a view that can be seen where the community is always changing, while the law is determined to be fixed and permanent. But there are times when the law also changes with the stipulation of new legal provisions. Such a situation can lead to a gap between law and people's lives.

This difficulty can occur because people's lives are more advanced than the applicable legal provisions. In this case there is a life of the people who are not in accordance with the requirements demanded by law. This means that the law is left behind from the necessity of living in society. Gaps can also occur if there are new legal provisions stipulated that are not in accordance with the behavior that lives in the community, meaning that people's lives are left behind from the applicable legal provisions. To overcome this gap, changes in the law are needed so that the law is in accordance with the changes and needs of the people concerned (legal politics). The indicator to be categorized as a law that is in accordance with the needs of the community is a law that places it as an instrument to achieve the stated social goals, then in terms of form and content it is a forum and aspirations of various social interests. Then the law can arrange fairly the rights and obligations as well as sanctions when violated later.

In this context the position of law (Perda) in legal politics can be seen at least in three dimensions of legal figures<sup>31</sup>: **First**, law (Perda) as an instrument of change in society to achieve social goals. In this context, what needs to be considered is what changes in the law (Perda) or the formation of law (Perda), which can meet the needs of the community. So the law (Perda) is not a goal but as a means to an end. To make a law (Perda) that can bring about achieving goals, it is necessary to pay attention to the quality of the law (Perda), not just paying attention to its legality, but determining its contents must be in accordance with the legal needs of the community.

**Second**, the law (Perda) as the mission bearer. Law (Perda) is a container that accommodates all aspirations regarding various things that want to be organized and achieved. A container called law (Perda) is important, because it has advantages over other containers. In a mission to improve the situation and achieve its goals, it is equipped with a compulsive nature, supported by legitimate authority and formulated clearly and firmly so that its effectiveness is guaranteed.

**Third**, Law (Perda) is a management tool. Through the law all interests are arranged fairly, determine what should be done and what not to do, regulate the rights and obligations of individuals, groups, institutions, prepare sanctions and be complemented by institutions / enforcement officers.

Legal politics that is based on developments and changes in society will be more pragmatic in nature, will come in contact with the various "staatsidee" or "rechtidee" shifts, because it must be done carefully. For example, the needs and interests of industrial societies, differ from the needs and interests of agrarian societies.

In agrarian society, land is still the dominant factor in life, both in the economic, social, cultural and even political fields. The problem of employment is mainly related to the land tenure system. Ownership of land rights or rights that can be attributed privately to land is seen as a strong productivity driver for agricultural labor. In contrast to industrial society, the challenge of employment is no longer in relation to land. The challenge is the availability of capable and skilled human resources to work in various industrial features.

### B. Community Structure

The Indonesian nation consists of various ethnic groups, various origins, various religions and various customary legal systems. The composition of society is very diverse (heterogeneous). This raises the diversity of ways of thinking and values adopted. In this community structure, expertise is required in making laws and regulations that are in accordance with the needs of the community.

The legal politics of the formation of legislation includes the formation of regional regulations on relatively homogeneous societies in the economic, social, cultural and political fields which should differ in legal politics in pluralistic societies

<sup>31</sup>Compare with the opinion of Bernard L. Tanya, in Tanya, Bernard L. 2011. *Op.Cit.*, p. 11.

(heterogens). In a pluralistic society, uniformity of legal politics can cause political, economic and social problems. Therefore, legal politics such as unification must be carefully considered for its benefits to plural societies.

Normatively there are positive aspects of a legal politics of unification, including: (1) simplification of law, (2) equality before the law, (3) instruments towards a homogeneous society. However, sociologically, the normative purpose of unification does not always reach the goal, even if it is the opposite.

In this situation, it appears that how the politics of law Establishment of legislation (Regional Regulation) will determine the realization of the development of a national legal system that is accommodative, compromise and futuristic.

For this reason, in the present and future legal politics of the establishment of legislation (Regional Regulations), the structure of society must be one means of understanding and justifying government actions in establishing regional regulations which must apply and become one of the ways the government sets policies in stipulating applicable regional regulations. For example in the formation of regional regulations must pay attention to and apply the principle of Unity in Diversity, in the preparation of the National Legislation Program (Prolegnas) and the Regional Legislation Program (Prolegda) must pay attention to the influence of the structure of society as the reality of life. Also in the preparation of Academic Scripts, the reality of the community structure must be considered in relation to the object of regulation, so that the regional regulations to be established are in accordance with the needs of the community, so that they are in accordance with the sense of justice of the community. This is one reason why in the process of establishing regional regulations must involve the community.

### C. Globalization Trends

The legal politics of the formation of legislation including the formation of regional regulations, both now and in the future must also pay attention to global influences. In the global context, legal politics does not merely protect national interests but must also protect cross-national interests, including: (1) Political law regarding copyrights, patents and brands cannot be separated from the interests of those rights owned by foreigners. Regardless of that interest, not only can it cause legal conflict but it may lead to political and economic conflicts between countries. (2) The politics of labor is influenced by various global issues such as MAH, worker welfare and so on.

The problem is determining, to what extent the global problem really is a global demand, or just a strong state interest imposing the will and interests of other countries.

When talking about globalization, the first thing that comes to mind is economic globalization, globalization of communication and information. Therefore, to understand the meaning and implications of globalization, it needs to be explored first, what is in the field interpreted as globalization and what actually causes globalization? Then what is the



influence of economic globalization, communication and information on the life of the nation and state.

At the beginning of the independence of the Republic of Indonesia, the production process was still largely carried out domestically. The process of production, manufacturing and industry, economic processes still remain a national phenomenon. Since around 1950 this process of internationalization has increasingly penetrated the national borders of the country, which has been accelerated again by the increasing number of activities of economic cooperation, international economic assistance and foreign investment. This, encouraging the necessity to enlarge production and the necessity to expand the market, supported by new discoveries in the fields of technology, communication and telecommunications resulted in more and more products not only being produced in one country, but various parts and components produced in a number of countries, where lowest production costs. Production is no longer just meeting the needs of the local market, but production is deliberately made to meet foreign markets in this case the need for exports abroad.

This phenomenon, resulting in the growth of a new pattern of division of labor that no longer sees the world fragmented into large and small countries, each with a different national economic system, but departing from the world as a market global and one planet inhabited by humans.

Furthermore, global thinking enters the environment, explaining that industrial development can no longer be carried out indefinitely, because natural resources that are processed by the industry will one day be exhausted, at one time the earth itself could no longer provide livelihoods to humanity, because the atmosphere, land, and water have been so polluted by human behavior in the production, manufacturing and industrial processes.

In the economic field, multinational companies or now better known as transnational companies play an important role in the development of the flow of globalization, especially because one transnational company operates in many countries.

In the field of communication and telecommunications, inventions in the field of computers and electronic technology or information technology such as mobile phones have eliminated constraints regarding distance. Everyone without knowing the boundaries of the region can communicate whenever he wants. This proves that national territorial boundaries are increasingly easily penetrated with the help of communication tools. Because it is increasingly difficult to stem the flow of information that comes from outside and it is increasingly difficult to select which information is positive and which has a negative effect. It is estimated, on the one hand, that the flow of globalization has a positive influence, but on the other hand globalization may have a negative effect.

For Indonesia, on the one hand, globalization can attract products to the world market, if more and more components of products that are owned by transnational companies can be made in Indonesia. On the other hand, it can be

questioned to what extent Indonesian entrepreneurs really play a role as actors or players in the global trade arena.

The Indonesian nation as a great nation, does not need and must not close itself to modernization and globalization, because like it or not it is already a life reality that cannot be avoided. The Indonesian nation must prepare itself to be able to benefit from the flow of globalization and on the other hand it can counteract negative influences.

This is where legislation is needed including regional regulations that are in accordance with the needs of the community, not in conflict with the public interest and do not conflict with higher laws and regulations (legal certainty). On the one hand it can develop international cooperation in the economic field, but on the other hand it will be effective signs to protect the lives and personality and identity of the Indonesian people in the storm of globalization. In this situation, it appears that how the politics of law Establishment of legislation (Regional Regulation) will determine the realization of the development of a national legal system that is accommodative, compromise and futuristic.

For this reason, in the present and in the future, the legal politics of the establishment of legislation (Regional Regulation), the influence of globalization must be one means of understanding and justifying government actions in establishing regional regulations that must apply and become one of the ways in which the government establishes policies in stipulating applicable regional regulations. For example in the preparation of the National Legislation Program (Prolegnas) and the Regional Legislation Program (Prolegda) it must pay attention to the influence of globalization as the reality of life. Also in the preparation of Academic Scripts must consider the reality of the demands of global life related to the object of regulation, so that the regional regulations that will be formed are in accordance with the needs of the community, both on a national scale and on an international scale.

Overall, it can be said that the basis and style of politics that is to be built, the development of society, the composition of society and global trends will be a means of understanding the policy of why the government establishes such policies in the formation of regional regulations. This means that the existence of a legislation (Regional Regulation) must not be separated from the context of sociology-cultural studies (socio-cultural context). Such studies can not be separated from the study and political assessment of the law as a cultural product. In this context people speak legal culture.

## 5. Conclusion

- 1) Whereas the legal nature of law in the formation of regional regulations in realizing the development of a national legal system is government policy (= President + DPR) in stipulating applicable regional regulations which include: (a) the contents of the policy that justifies government actions in stipulating applicable regional regulations and (b) regarding the way the government determines the policy in stipulating the applicable regional regulations, if viewed from the legal structure

- (authority and method of making it) political messages, because the state agency or institution authorized to make it is a political institution, but in terms of legal substance the law that should apply as a justification for the government's actions in stipulating the applicable local regulations, in terms of legal culture is a cultural product because it reflects the living values in the community so that regional regulations that will or have been formed are in accordance with the objectives of the community (state), the legal needs of the community and to create a unity of the national legal system that has legal certainty, does not contend with public interests and higher legislations. Accommodative, compromise and futuristic.
- 2) That the legal politics for the establishment of regional regulations that can bring about the development of a national legal system, the government (= President + DPR) chooses how to determine policies in establishing applicable regional regulations: First; Establishment of regional regulations is placed as a sub-system of national law, Second; Establishment of regional regulations must be in accordance with the principles of formation and the principles of material content of legislation, Third; Created through the stages of planning (prolegda), the drafting stage (making academic manuscripts, involving experts, community participation), discussion stage (discussed with the DPRD and the regional head), ratification or stipulation (with mutual agreement between the DPRD and the Regional Head, then determined by the head area) and the stage of enactment in regional sheets, supervision of regional regulations. However, in its implementation it has not been able to fully realize the goal of developing a national legal system. Although regulations regarding the processes and procedures for establishing regional regulations tend to be democratic, there are still many regional regulations that conflict with public interests and higher legislations. This is due to regulations that regulate the processes and procedures for establishing regional regulations, particularly regarding the existence of Prolegda and Academic Manuscripts, the involvement of experts and community participation is still facultative and not imperative and in its implementation inconsistent, not yet fully binding for the Regional Head and the Regional People's Representative Council in submitting a draft regional regulation.
- 3) Whereas the factors that influence the legal politics of the formation of regional regulations as a means of justification and understanding of government policies in realizing the development of a national legal system are: (1) Political basis and pattern to be built, (2) Community development, (3) Community structure (4) including globalization tendency. These four elements will become sociological considerations or justification of government policies in establishing regional regulations that apply according to the legal needs of the community.
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