

HARMONIZING THE NATIONAL LEGAL SYSTEM THROUGH THE FORMATION OF IDEAL LEGISLATION

Moh. Fahriyanto Marikar¹

¹ *Gorontalo Regional Settlement Infrastructure Center, Email : Arimarikarbusiness@gmail.com*

Abstract: The purpose of this research is to find out and analyze an ideal formation of legislation in accordance with the times and the ideals of the Indonesian state as stated in the 1945 Constitution. This research uses the type of research used, namely normative-empirical (applied), which is research that examines the implementation or implementation of positive legal provisions (legislation) and written documents in action (factual) on any specific legal events that occur in society. Based on the results of the research, the researcher can conclude that a systemic approach to achieving legal harmonization can be carried out through several principles of approach, namely: analysis of the legal system as a whole, harmony and consistency between various legal regulations, consideration of legal impacts on society, and involvement of stakeholders in the harmonization process. Then, regarding harmonization in laws and regulations in Indonesia, in reality, there are still problems in the application of the hierarchy of laws and regulations. Such as the unclear position of the MPR Tap and Ministerial Regulations and also the position of existing Legislation in Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation which is still confusing and not harmonious. Furthermore, to overcome the problems and juridical issues that exist in the Hierarchy of Legislation in Indonesia at this time the researcher modifies the Hierarchy of Indonesian Legislation as follows, the first order is filled by the 1945 Constitution of the Republic of Indonesia then the second order is filled by the Central Level Legislation, and the last is filled by regional level Legislation.

Keywords: Harmonization; Legislation; Legal System; National.

1. Introduction

Harmonization of the national legal system is one of the important aspects in maintaining the stability and effectiveness of law in a country.¹ In an effort to realize this harmonization, the formation of laws and regulations has a crucial role.² Legislation is a legal instrument used to regulate the legal order in a country, which covers various aspects of community life.³ At the beginning of independence, the system of laws and regulations in Indonesia did not recognize a clear hierarchy. In that era, the government system, which tended to be centered on executive power, led to the emergence of regulations and decisions that are not commonly known today. Examples are Presidential Edicts, Presidential

¹ Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum," *Jambura Law Review* 1, no. 1 (2019): 71.

² Risdiana Izzaty, "Urgensi Ketentuan Carry-Over Dalam Pembentukan Undang-Undang Di Indonesia," *Jurnal HAM* 11, no. 1 (2020): 85–98.

³ Ni Ketut Tri Srilaksmi, "Fungsi Kebijakan Dalam Negara Hukum," *Pariksa: Jurnal Hukum Agama Hindu* 4, no. 1 (2020): 30–38.

Stipulations, emergency laws, Federal Laws, Presidential Instructions, and Presidential Decrees. Despite the complexity and diversity of these types of regulations, there were only three types of laws and regulations that were recognized in addition to the Constitution during this time.⁴

The position as a democratic rule of law is imaged and answers all national problems with the political interests of political parties and politicians in representative institutions.⁵ As a legal product, legislation is considered an objective thing because it is made in a process and technical preparation that complies with legal principles by the people's representative institutions. Legislation is defined as written regulations that contain legal norms that are binding in general and are formed or stipulated in laws and regulations.⁶

However, as time goes by and the government system changes, the need for harmonization of the national legal system is increasingly urgent.⁷ The establishment of laws and regulations that are structured, clear, and based on the principles of democracy and justice is important in achieving these goals. Harmonized laws and regulations will provide legal certainty for the people, protect their rights and interests, and facilitate the growth of a sustainably developing economy.⁸ It is in this context that this journal will explore the role of legislation formation in realizing the harmonization of the national legal system. Through an in-depth analysis of the prospects of existing laws and regulations in the harmonization process, it is hoped that this journal can provide valuable insights for academics, legal practitioners, and policy makers in an effort to improve the national legal system.

In general, the birth of Law No. 12/2011 has provided improvements to Law No. 10/2004, especially by restoring the position of MPR Decrees in the hierarchy of laws and regulations. MPR Decrees are placed at the level below the 1945 Constitution of the Republic of Indonesia and at the level above the law, the type and hierarchy of which is contained in Article 7 paragraph (1) as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Law / Government Regulation in Lieu of Law;
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regional Regulations; dan
7. Regency/City Regional Regulations.

Furthermore, Article 7 paragraph (2) of Law No. 12/2011 determines that the legal force of laws and regulations is in accordance with the hierarchy as in Article 7 paragraph (1). This means that the 1945 Constitution of the Republic of

⁴ Pasal 1 Ayat 2 Undang-undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.

⁵ Fauzi Iswahyudi, "Implikasi Kebijakan Omnibus Law Cipta Kerja Dalam Perspektif Teori Perundang-Undangan," *Mahadi: Indonesia Journal of Law* 1, no. 1 (2022): 58–71.

⁶ Tjondro Tirtamulia, "Konstruksi Peraturan Desa Dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Majelis: Media Aspirasi Konstitusi* 2 (2019): 55–68.

⁷ Kusnu Goesniadhie Slamet, "Harmonisasi Hukum Dalam Perspektif Perundang-Undangan," *Jurnal Hukum Ius Quia Iustum* 11, no. 27 (2004): 82–96.

⁸ Muksalmina Muksalmina, Faisal Faisal, and Hera Susanti, "Kajian Dasar Hukum Bagi Teknologi Finansial Sebagai Penunjang Ekonomi Internasional," *Jurnal Tana Mana* 4, no. 1 (2023): 140–46.

Indonesia (UUD NRI Tahun 1945) is used as the basic norm. Therefore, the consequences are: First, the 1945 Constitution overrides all lower regulations (the principle of *lex superior derogat legi inferiori* applies) and second, the content material of the 1945 Constitution becomes the source in the formation of all legislation, so that MPR Decrees to Regency / City Regional Regulations may not conflict with the 1945 Constitution.

However, although Law No. 12/2011 is seen as more perfect than Law No. 10/2004, in reality there are still problems in the application of the hierarchy of laws and regulations. In fact, the problems in Law No. 12/2011 are far more complex than in Law No. 10/2004. Based on this, the author takes the research title "Harmonization of the National Legal System through the Formation of Legislation". This research is very important because until now there are still many problems regarding the hierarchy of laws and regulations in Indonesia.

2. Research Methods

The type of research used is normative legal research, where the object of study includes basic norms or rules, legal principles, statutory regulations, comparative law, doctrine, and jurisprudence. The approaches used by researchers in compiling this research are, among others: the legal approach (statue approach); and a case approach. This study uses a deductive-inductive analytical perspective approach.

3. Discussion

3.1. A Systemic Approach in Achieving Legal Harmonization

Legal harmonization is an effort or process that seeks to overcome the boundaries of differences, conflicting matters and irregularities in the law. Efforts or processes to realize harmony, suitability, compatibility, balance among legal norms in laws and regulations as a legal system in a unified framework of the national legal system.⁹

In legal harmonization with a systems approach, the connotation of the system as an entity.¹⁰ The National Legal System is seen as a complex entity consisting of various legal parts or legal subsystems that are interrelated, but form a unified whole.¹¹ This system has a foundation in Pancasila and is based on the 1945 Constitution as the basic concept in compiling the national legal system.

Departing from the concept of a legal system, legislation can be seen as a system that is a component of the national legal system. Within the framework of the national legal system, laws and regulations are considered as an integrated part

⁹ Yordan Gunawan, "Pentingnya Harmonisasi Hukum Negara Dan Hukum Islam" (Yogyakarta: UMY Press, 2012). Pg. 24

¹⁰ Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68.

¹¹ Abdul Halim Barkatullah, *Framework Sistem Perlindungan Hukum Bagi Konsumen Di Indonesia* (Jakarta: Nusa Media, 2017).

or sub-system.¹² The legal provisions contained in laws and regulations as a system and sub-system of national law have integrated principles and are based on Pancasila and rooted in the 1945 Constitution. Thus, the national legal system becomes harmonious, which means harmonious, in line, balanced, and consistent, and there is no conflict or conflict between one legislation and another, both in the vertical and horizontal dimensions.

Harmonization of the national legal system puts the mindset underlying the preparation of the legal system within the framework of the national legal system (legal system harmonization) which includes:

- a. "legal substance component or legal system consisting of external legal order, namely legislation, unwritten law including customary law and jurisprudence, as well as internal legal order, namely the legal principles that underlie it;
- b. the legal structure component along with its institutions (legal structure), which consists of various institutional bodies or public institutions with their officials; and
- c. the legal culture component, which includes the attitudes and behavior of officials and citizens with respect to other components in the process of organizing social life."¹³

Furthermore, paying attention to the national legal system as input, namely taking into account the existence of the existing national legal system which includes elements: legal substance or legal system consisting of external legal order, namely legislation, unwritten law including customary law and jurisprudence, as well as internal legal order, namely the legal principles that underlie it; legal structure and its institutions (legal structure) consisting of various institutional bodies or public institutions with their officials; and legal culture which includes the attitudes and behavior of officials and citizens with respect to other elements in the process of organizing social life.¹⁴

Furthermore, it pays attention to the reality of the existence of national law and its enforcement in practice on a national, regional and global scale. Interaction between three components, namely:

- a. the paradigm of Pancasila, the concept of the rule of law and the principles of constitutional government in the 1945 Constitution, as well as a sense of justice and aspirations that develop in society;
- b. the existence of a national legal system that includes elements of legal substance, legal structure and its institutions and legal culture; and
- c. the reality of the existence of national law and its enforcement in practice on a national, regional and global scale will produce an insight into the main ideas or views of legal doctrine.

¹² Achmad Budi Waskito, "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi," *Jurnal Daulat Hukum* 1, no. 1 (2018): 288.

¹³ Yenny Yorisca, "Pembangunan Hukum Yang Berkelanjutan: Langkah Penjaminan Hukum Dalam Mencapai Pembangunan Nasional Yang Berkelanjutan," *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 98–111.

¹⁴ Sapto Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *CIVIS: Jurnal Ilmiah Ilmu Sosial Dan Pendidikan Kewarganegaraan* 4, no. 2 (2014).

Based on these insights and points of thought or views of legal doctrine will give birth to the concept of harmonization of the legal system, which will underlie the formulation of legislation planning and law making process through legislation.

In the end, through the implementation of law enforcement, it is hoped that harmonious national laws and regulations will be created.¹⁵ The legal harmonization includes aspects of harmony, balance, integration, and consistency, as well as complying with applicable principles. The results of this legal harmonization process will be evaluated or assessed, both in relation to its effect on the existing national legal system which includes legal substance, legal structure and its institutions, and legal culture. The evaluation will produce new legal insights or views that will also renew the insights and formulation of legal policy lines in the future.

Legal harmonization can be interpreted as a regulatory process that involves the creation of legal products through legal discovery, legal design, and exploration of existing values in society.¹⁶ Although this approach is considered ideal and nationalistic, it requires considerable time and high costs. Therefore, ideally, legal harmonization can be taken by adopting existing models of banking law, financial law and economic law from developed countries, either in their original form (adoption) or in a modified form (adaptation). These legal models can be found in uniform laws and legal models developed by international bodies such as BIS, IBRD, ICC, WTO, UNCITRAL, UNIDROIT, as well as through the ratification process of international conventions. By taking such legal harmonization steps, the resulting legal norms will have transnational values. In addition, from an economic point of view, this step does not require too much time and costs too high.¹⁷

Through a systemic approach, legal harmonization can be achieved by involving the understanding and handling of law as a complex and interrelated system. This approach recognizes that the law does not stand alone, but interacts with various elements in society and the wider environment. So according to researchers, several principles and components of a systemic approach are needed in achieving legal harmonization, including :

- a. System Analysis: A systemic approach involves analyzing the legal system as a whole, looking at the relationship between the various elements of the law and how they affect each other. This includes an understanding of legal rules, principles, institutional structures, and legal procedures;
- b. Coherence and Consistency: Legal harmonization involves harmony and consistency between various legal regulations. A systemic approach considers the implications and interactions between these regulations to achieve harmony in the legal system as a whole. This involves identifying differences, conflicts, and inconsistencies between existing laws;
- c. Legal Synchronization: A systemic approach also involves efforts to harmonize different legal regulations within a single system. This may involve adjusting,

¹⁵ Ansori Lutfil, "Reformasi Penegakan Hukum Perspektif Hukum," *Jurnal Yuridis* 4, no. 2 (2017): 148–63.

¹⁶ Jonaedi Efendi, *Rekonstruksi Dasar Pertimbangan Hukum Hakim: Berbasis Nilai-Nilai Hukum Dan Rasa Keadilan Yang Hidup Dalam Masyarakat* (Prenada Media, 2018).

¹⁷ Dewi Astuty Mochtar, "Harmonisasi Hukum Pada Konteks Perjanjian Dalam Sistem Common Law Dan Civil Law," 2009.

revising or creating new laws that are compatible with the same objectives. The aim is to create legal coherence and clarity and avoid conflict or confusion in the application of the law;

- d. **Impact Mapping:** A systemic approach considers the impact of laws on society and various sectors of life. This includes analyzing the social, economic, political, and environmental effects of existing or proposed legal regulations. By understanding such impacts, a systemic approach can help in designing better laws and avoiding unintended consequences.
- e. **Involvement of Relevant Parties:** A systemic approach encourages the active involvement of various stakeholders in the legal harmonization process. This includes the participation of communities, advocacy groups, legal experts, academics, and government. Through dialogue and collaboration between relevant parties, a systemic approach can help achieve broader agreement and better support for legal harmonization.

The systemic approach in achieving legal harmonization recognizes the complexity of law and seeks to understand and address the interactions between the various elements of law. By viewing law as an interrelated system, this approach can provide a solid foundation for achieving harmony in the legal system as a whole.

3.2. Harmonization in Indonesian Legislation

The provisions contained in Article 1 paragraph (2) of Law Number 12/2011 on the Formation of Legislation have clearly stipulated that as a democratic state of law, laws and regulations are imaged and answer all national problems with the political interests of political parties and politicians in representative institutions. As a legal product, legislation is considered an objective thing because it is made in a process and technical preparation that complies with legal principles by the people's representative institutions. Legislation is defined as written regulations that contain legal norms that are binding in general and are formed or stipulated in laws and regulations.¹⁸

Harmonization of laws and regulations has an important meaning in the context of laws and regulations being an integral part or sub-system in a country's legal system, so that these laws and regulations can be interrelated, interdependent, and form a unified whole. In Indonesia, the system of forming laws and regulations can be found in the constitution, namely in Article 5 paragraph (1) of the 1945 Constitution which states that the President has the right to propose draft laws to the House of Representatives, as well as Article 20 paragraph (1) of the 1945 Constitution which confirms that the House of Representatives has the power to form laws. Furthermore, Article 22 A of the 1945 Constitution stipulates that the procedure for the formation of laws will be further regulated by law. In order to implement this provision, Law No. 10/2004 on the Formation of Legislation was enacted.

Law No. 10/2004 on the Formation of Laws and Regulations regulates the system of laws and regulations that are arranged hierarchically. The hierarchy can be found in several article formulations as follows:¹⁹

¹⁸ Agnes Fitryantica, "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law," *Gema Keadilan* 6, no. 3 (2019): 300–316.

¹⁹ Undang-Undang Nomor 10 Tahun 2004 Tentang Pembentukan Peraturan Perundang-Undangan

Article 2, which states:

"Pancasila is the source of all sources of state law"

Article 3 paragraph (1), which states:

"The 1945 Constitution of the Republic of Indonesia is the basic law in the Laws and Regulations."

Article 7 paragraph (1), which states:

Types and Hierarchy of Legislation are as follows:

- a) *The 1945 Constitution of the Republic of Indonesia;*
- b) *Law / Government Regulation in Lieu of Law;*
- c) *Government Regulations;*
- d) *Presidential Regulations;*
- e) *Regional Regulations."*

In the above-mentioned arrangements, there is a hierarchy of laws and regulations in Indonesia. The placement of Pancasila as the main source of all sources of law is in accordance with the Preamble of the 1945 Constitution, which stipulates Pancasila as the basis of state ideology and the philosophical basis of the nation and state.²⁰ Therefore, any material contained in laws and regulations must not contradict the values contained in Pancasila.²¹ Furthermore, the 1945 Constitution is the source of law that forms the basis for the formation of laws and regulations under it. The Constitution is the basic norm that regulates the legal norms that are below it.²²

The hierarchy or order of laws and regulations under the 1945 Constitution is in accordance with the provisions of Article 7 paragraph (1) mentioned above.²³ The hierarchy or order of laws and regulations has an important meaning in terms of the legal force of the laws and regulations. This is regulated in the provisions of Article 7 paragraph (5), which reads:

"The legal force of laws and regulations is in accordance with the hierarchy as referred to in paragraph (1)."

With these provisions, it has been clearly regulated regarding the legal force and binding force of each legislative regulation. The material of laws and regulations is not allowed to contain substances that conflict with regulations that have a higher hierarchical level. The material of laws and regulations can only regulate rules that are detailed and implement the laws and regulations that are above them.

In this context, the principle of "lex superiori derogat legi inferiori" applies, which means that laws and regulations that have a higher hierarchical level will override or defeat laws and regulations that have a lower hierarchical level.²⁴ Therefore, in the process of drafting laws and regulations, the legislator must ensure

²⁰ Sri Hariningsih, "Komentar Singkat Terhadap Undang-Undang Republik Indonesia Nomor 10 Tahun 2004 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 1, no. 2 (2018): 11–20.

²¹ Oksep Adhayanto, "Implementasi Nilai-Nilai Pancasila Sebagai Dasar Negara Dalam Pembentukan Peraturan Perundang-Undangan," *Jurnal Ilmu Hukum* 6, no. 2 (2015): 166–74.

²² Teuku Saiful Bahri Johan, *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Tataran Reformasi Ketatanegaraan Indonesia* (Deepublish, 2018).

²³ Firman Freaddy Busroh, "Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan," *Arena Hukum* 10, no. 2 (2017): 227–50.

²⁴ Ferry Irawan Febriansyah, "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Perspektif* 21, no. 3 (2016): 220–29.

that the material regulated in the regulation does not conflict with the laws and regulations above it. For example, articles in a Government Regulation must be in accordance with articles in a Law, articles in a Presidential Regulation must be in accordance with articles in a Government Regulation, and so on. The formulator of laws and regulations has the obligation to compile these regulations in harmony with the articles in laws and regulations that have a higher hierarchical level, which is the basis for the formation of these laws and regulations. This process is known as vertical harmonization of laws and regulations,²⁵ Vertical harmonization is the harmonization of laws and regulations with other laws and regulations that are in a different hierarchy. The importance of vertical harmonization of laws and regulations is that in the Indonesian legal system, these laws and regulations can be tested by the judicial power.

However, in reality there are still problems in the application of the hierarchy of laws and regulations in Indonesia, including:

- 1) Law No. 12/2011 restores the position of the People's Consultative Assembly (MPR) Decrees in the hierarchy of laws and regulations. This is motivated by the constitutional duty of the MPR as stipulated in Article I of the Supplementary Rules of the 1945 Constitution (after the amendment) to review the material and legal status of the MPRS decrees and MPR Decrees to be decided in the 2003 MPR session which was then outlined in MPR Decree No. I/MPR/2003. The problem is that after the amendment of the 1945 Constitution, an institution called the Constitutional Court (MK) was born, which has constitutional authority, one of which is to test the law against the Constitution, while legislation under the law against the law can be tested at the Supreme Court. This means that in the hierarchy of laws and regulations in Law No. 12/2011, the MPR Decree cannot be tested, either through the Constitutional Court or the Supreme Court, if there is material in the MPR Decree that contradicts the 1945 Constitution or laws and regulations below it that contradict the MPR Decree.
- 2) Law No. 12/2011 also recognizes the existence of other types of laws and regulations outside the hierarchy as in Article 7 paragraph (1). These other regulations are in the form of Regulations of the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, equivalent bodies or institutions established by law or government by order of law, Provincial DPRD, Governor, Regency / City DPRD, Regent / Mayor, Village Head or equivalent. These regulations do not have a definite position in the hierarchy of laws and regulations, so they often create confusion and conflict with other laws and regulations. For example, as a legal basis, it will be very difficult to determine the higher position between Bank Indonesia Regulations and Government Regulations. In practice, Government Regulation No. 29/1999 allows foreigners to buy a maximum of 99% of shares

²⁵ Jejen Jaelani, "Kewenangan Kementerian Hukum Dan Hak Asasi Manusia Dalam Proses Harmonisasi Rancangan Peraturan Daerah" (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

- in local banks, while Bank Indonesia Regulation No. 14/8/PBI/2012 stipulates that foreigners can only buy a maximum of 40% of shares in local banks.²⁶
- 3) The hierarchical position of Ministerial Regulations is not included in Article 7 paragraph (1) of Law No. 12/2011, but according to Article 8 paragraph (2) of Law No. 12/2011 Ministerial Regulations are recognized and have binding legal force as long as they are ordered by higher laws and regulations or formed based on authority. This creates confusion which in practice is often ignored, namely many regions that form Regional Regulations that do not refer to Ministerial Regulations and some are also contrary to Ministerial Regulations. In fact, there are not a few local governments that deliberately ignore Ministerial Regulations, this is certainly motivated by the unclear position of Ministerial Regulations in the hierarchy as stipulated in Law No. 12/2011.
 - 4) The position of Regency/City Regulations is below Provincial Regulations in the hierarchy of laws and regulations which raises juridical questions whether the formation of Regency/City Regulations must be preceded by the formation of Provincial Regulations or not.

If you pay attention, the order of laws and regulations in Indonesia starting from MPRS Tap No. XX/MPRS/1966, MPR Tap No. III/MPR/2000, Law No. 10 of 2004, to Law No. 12 of 2011 each functioned to bring order to the previous order of laws and regulations which were considered to contain many problems and full of overlapping material content. Therefore, when compared, it can be seen that changes are made through patchwork and dismantling the position of laws and regulations. In MPR Decree No. III/MPR/2000, Perppu is aligned with the law, then in MPRS Decree No. XX/MPRS/1966 it is downgraded to be under the law. Meanwhile, ministerial regulations were removed from the hierarchy and other implementing regulations were replaced with regional regulations. In Law No. 10 of 2004, the position of Perppu was restored to be equal to the law, while the position of MPR Decree was abolished and Presidential Decree was replaced by Presidential Regulation. In Law No. 12/2011, MPR Decrees are restored to their position in the hierarchy, which is right below the 1945 Constitution and right above the Law.

Based on the above, it can be said that in the past and in the future, changes in the hierarchy of laws and regulations in Indonesia have been carried out through the mechanism of dismantling the order of laws and regulations.²⁷ However, the focus here is not only to make the regulations like a puzzle that is disassembled, but also to see whether the regulations in the future cause confusion and problems or not because it could be that the regulations that were removed from the order of laws and regulations still have relevance to the development of today's times.²⁸ This is also supported by the development of an increasingly advanced constitutional system. The most concrete example is that although currently Ministerial Regulations are not in the order of laws and regulations in Law No. 12/2011, in fact, many are used as the legal basis for making Regional Regulations so that their

²⁶ Retno Saraswati, "Perkembangan Pengaturan Sumber Hukum Dan Tata Urutan Peraturan Perundang-Undangan Di Indonesia," *Media Hukum* 9, no. 2 (2009): 48–59.

²⁷ Abd Muni, "Reaktualisasi Hierarki Peraturan Perundang-Undangan Di Indonesia," *Mukammil: Jurnal Kajian Keislaman* 3, no. 1 (2020): 1–20.

²⁸ Zaka Firma Aditya and Muhammad Reza Winata, "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 79–100.

position is higher than regional regulations. This will certainly cause confusion, debate, and multiple interpretations in the community, resulting in the chaotic implementation of various laws and regulations in Indonesia.²⁹

Based on the above, the author designs a reconstruction related to the ideal hierarchy of laws and regulations, namely:

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Central level laws and regulations, namely:
 - a. Laws and Government Regulations in lieu of Laws;
 - b. Government Regulation;
 - c. Presidential Regulations; Regulations of the People's Consultative Assembly, Regulations of the House of Representatives, Regulations of the Regional Representatives Council, Regulations of the Supreme Court, Regulations of the Constitutional Court, and Regulations of the Supreme Audit Agency
 - d. Ministerial Regulations and Heads of Ministry-level State Institutions;
 - e. Regulations of Heads of Non-Ministerial Government Institutions; and
 - f. Regulation of the Director General of the Ministry of.
- 3) Regional level laws and regulations, namely:
 - a. Provincial Regional Regulation;
 - b. Governor Regulation;
 - c. Regency/City Regional Regulations;
 - d. Regent/Mayor Regulation;
 - e. Village Regulations; and
 - f. Village Head Regulation.

4. Conclusion

Legal harmonization refers to the effort or process of adjusting legal principles and systems in order to achieve simplicity, certainty, and legal justice. As part of the process of forming laws and regulations, legal harmonization aims to resolve conflicts and inconsistencies between legal norms contained in laws and regulations, so that national laws and regulations can be formed that are harmonious, in line, balanced, integrated, and consistent, and comply with legal principles. The systemic approach in the harmonization of national laws is based on the paradigm of Pancasila and the 1945 Constitution which form a system of government with two fundamental principles, namely democracy and the rule of law, which are expected to create a national legal system with three components, namely legal substance, legal structure and its institutions, and legal culture. This systemic approach can be implemented through harmonization of laws and regulations, and realized through law enforcement. Through the harmonization of laws and regulations, a legal system that accommodates the need for legal certainty and justice can be formed. Similarly, through legal harmonization, overlaps between judicial institutions responsible for judicial power and government institutions that have judicial authority in accordance with laws and regulations can be avoided. To achieve harmonization of the hierarchy of laws and regulations in Indonesia in the future, the government is expected to consolidate laws and regulations related to

²⁹ Otong Syuhada, "Rekonstruksi Positivisme Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia," *Journal Presumption of Law* 2, no. 2 (2020): 1–23.

the same topic or field to avoid overlapping laws and regulations and make efforts to reduce the number of unnecessary or overly complicated regulations. In addition, the government should improve coordination and synergy between related institutions, such as the legislature, executive, and judiciary, in the process of making and drafting laws and regulations. Good coordination will help prevent disharmony in the regulatory hierarchy.

References

- Adhayanto, Oksep. "Implementasi Nilai-Nilai Pancasila Sebagai Dasar Negara Dalam Pembentukan Peraturan Perundang-Undangan." *Jurnal Ilmu Hukum* 6, no. 2 (2015): 166–74.
- Aditya, Zaka Firma, and Muhammad Reza Winata. "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 79–100.
- Barkatullah, Abdul Halim. *Framework Sistem Perlindungan Hukum Bagi Konsumen Di Indonesia*. Jakarta: Nusa Media, 2017.
- Budoyo, Sapto. "Konsep Langkah Sistemik Harmonisasi Hukum Dalam Pembentukan Peraturan Perundang-Undangan." *CIVIS: Jurnal Ilmiah Ilmu Sosial Dan Pendidikan Kewarganegaraan* 4, no. 2 (2014).
- Busroh, Firman Freaddy. "Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan." *Arena Hukum* 10, no. 2 (2017): 227–50.
- Efendi, Jonaedi. *Rekonstruksi Dasar Pertimbangan Hukum Hakim: Berbasis Nilai-Nilai Hukum Dan Rasa Keadilan Yang Hidup Dalam Masyarakat*. Prenada Media, 2018.
- Febriansyah, Ferry Irawan. "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia." *Perspektif* 21, no. 3 (2016): 220–29.
- Fitryantica, Agnes. "Harmonisasi Peraturan Perundang-Undangan Indonesia Melalui Konsep Omnibus Law." *Gema Keadilan* 6, no. 3 (2019): 300–316.
- Gunawan, Yordan. "Pentingnya Harmonisasi Hukum Negara Dan Hukum Islam." Yogyakarta: UMY Press, 2012.
- Hariningsih, Sri. "Komentar Singkat Terhadap Undang-Undang Republik Indonesia Nomor 10 Tahun 2004 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia* 1, no. 2 (2018): 11–20.
- Hutomo, Priyo, and Markus Marselinus Soge. "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer." *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68.
- Iswahyudi, Fauzi. "Implikasi Kebijakan Omnibus Law Cipta Kerja Dalam Perspektif Teori Perundang-Undangan." *Mahadi: Indonesia Journal of Law* 1, no. 1 (2022): 58–71.
- Izzaty, Risdiana. "Urgensi Ketentuan Carry-Over Dalam Pembentukan Undang-Undang Di Indonesia." *Jurnal HAM* 11, no. 1 (2020): 85–98.

- Jaelani, Jejen. "Kewenangan Kementerian Hukum Dan Hak Asasi Manusia Dalam Proses Harmonisasi Rancangan Peraturan Daerah." Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020.
- Johan, Teuku Saiful Bahri. *Hukum Tata Negara Dan Hukum Admnistrasi Negara Dalam Tataran Reformasi Ketatanegaraan Indonesia*. Deepublish, 2018.
- Lutfil, Ansori. "Reformasi Penegakan Hukum Perspektif Hukum." *Jurnal Yuridis* 4, no. 2 (2017): 148–63.
- Mochtar, Dewi Astuty. "Harmonisasi Hukum Pada Konteks Perjanjian Dalam Sistem Common Law Dan Civil Law," 2009.
- Muhtar, Mohamad Hidayat. "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review* 1, no. 1 (2019): 71.
- Muksalmina, Muksalmina, Faisal Faisal, and Hera Susanti. "Kajian Dasar Hukum Bagi Teknologi Finansial Sebagai Penunjang Ekonomi Internasional." *Jurnal Tana Mana* 4, no. 1 (2023): 140–46.
- Muni, Abd. "REAKTUALISASI HIERARKI PERATURAN PERUNDANG-UNDANGAN DI INDONESIA." *Mukammil: Jurnal Kajian Keislaman* 3, no. 1 (2020): 1–20.
- Saraswati, Retno. "Perkembangan Pengaturan Sumber Hukum Dan Tata Urutan Peraturan Perundang-Undangan Di Indonesia." *Media Hukum* 9, no. 2 (2009): 48–59.
- Slamet, Kusnu Goesniadhie. "Harmonisasi Hukum Dalam Perspektif Perundang-Undangan." *Jurnal Hukum Ius Quia Iustum* 11, no. 27 (2004): 82–96.
- Srilaksmi, Ni Ketut Tri. "Fungsi Kebijakan Dalam Negara Hukum." *Pariksa: Jurnal Hukum Agama Hindu* 4, no. 1 (2020): 30–38.
- Syuhada, Otong. "Rekonstruksi Positivisme Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia." *Journal Presumption of Law* 2, no. 2 (2020): 1–23.
- Tirtamulia, Tjondro. "Konstruksi Peraturan Desa Dalam Hierarki Peraturan Perundang-Undangan." *Jurnal Majelis: Media Aspirasi Konstitusi* 2 (2019): 55–68.
- Waskito, Achmad Budi. "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi." *Jurnal Daulat Hukum* 1, no. 1 (2018): 288.
- Yorisca, Yenny. "Pembangunan Hukum Yang Berkelanjutan: Langkah Penjaminan Hukum Dalam Mencapai Pembangunan Nasional Yang Berkelanjutan." *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 98–111.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: ©JELTA UNG. This is an open access article distributed under the terms of the Creative Commons Attribution-Non Commercial 4.0 International License, which permits copy and redistribute the material in any medium or format, remix, transform, and build upon the material, provided you must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use and you may not use the material for commercial purposes.

Jurnal Legalitas (J.Legalitas - JELTA) is an open access and peer-reviewed journal published by Faculty of Law, Universitas Negeri Gorontalo. The contents of the articles and advertisements published in the Jurnal Legalitas (JELTA) are sole and exclusive responsibility of their respective authors and advertisers.