

## Existence Of Copyration Laws Related To The Principle Of Openness Which Are Not Completed In The Process Of Its Establishment

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### ABSTRACT

Good governance can be realized with the implementation of the formation of laws and regulations in accordance with the principles, especially the principle of openness. The importance of implementing the principle of openness is to make it easier for the public to provide input orally and/or in writing. Each Draft Legislation must be easily accessible to the public, with the aim that the government works fairly and transparently, and the public can also better understand how the government works, both in preparation, implementation and maximum results achieved. This study uses qualitative data with a normative juridical method or approach. The conclusion of this study is that there must be participation from the public starting from the stage of drafting the Law to the end, during the discussion stage in the DPR it must be carried out in a transparent, careful and unhurried manner. Also, the substance must be ensured that it meets the material and formal requirements in the formation of statutory regulations as stipulated in Law Number 12 of 2011 concerning the formation of statutory regulations.

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### ABSTRAK

Pemerintahan yang baik dapat terwujud dengan adanya pelaksanaan pembentukan Peraturan Perundang-Undangan yang sesuai dengan asas, khususnya asas Keterbukaan. Pentingnya dijalankan asas Keterbukaan yaitu untuk memudahkan masyarakat dalam memberikan masukan secara lisan dan/atau tertulis. Tiap Rancangan Peraturan Perundang-undangan itu harus dapat diakses dengan mudah oleh masyarakat, dengan tujuan agar pemerintah itu bekerja secara adil dan transparan, serta masyarakat juga dapat lebih memahami jalannya pemerintahan, baik dalam penyusunan, pelaksanaan dan hasil yang dicapai pun maksimal. Penelitian ini menggunakan data kualitatif dengan metode atau pendekatan Yuridis Normatif. Adapun kesimpulan dari penelitian ini adalah harus adanya partisipasi dari masyarakat dimulai dari tahap penyusunan Rancangan Undang-Undang hingga akhir, saat tahap pembahasan di DPR harus dilakukan secara transparan, penuh kehati-hatian dan tidak tergesa-gesa. Juga substansinya harus dipastikan telah memenuhi syarat materil dan formil dalam pembentukan peraturan perundang-undangan sebagaimana diatur dalam Undang-Undang Nomor 12 Tahun 2011 tentang pembentukan peraturan perundang-undangan.

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## I. INTRODUCTION

Building a government system is the main reference in managing government in Indonesia, especially at this time (Prastyo et al., 2020). In the administration of good governance, of course, the welfare of the community is the main consideration (AW, 2019). In its development, government administration has experienced changes caused by the influence of globalization. According to Government Regulation Number 101 of 2000 concerning Education and Training for Civil Servant Positions explaining the meaning of good governance "Government that develops and implements the principles of professionalism, accountability, excellent service transparency, democracy, efficiency, effectiveness, rule of law that can be accepted by all people." . So the principle of a good government system is the rule for the pattern of governance in a constructive manner between the state domain, the private sector, and society. Therefore, in realizing a good governance system, it requires commitment and involvement between all parties, both from the government and the community.

One of the things that need to be prioritized in realizing good governance is the implementation of the formation of laws and regulations in accordance with the principles and content. In essence, Legislation is a form of written policy that is regulatory in nature. In the formation of laws and regulations, a concept is known, namely the Omnibus law. According to the Black Law Dictionary Ninth Edition states "Omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes". (Busroh, 2017). The Omnibus Law is a concept that combines all changes in legislation into a new form of law in terms of aiming to overcome overlapping regulations and bureaucratic issues that hinder policy implementation (Aryani, 2021). Draft Law Number 11 of 2020 concerning Job Creation is one of the implementations of the Omnibus Law in the 2020 Priority Prolegnas, which has the urgency of accelerating the country's economic recovery. It contains 15 chapters, 174 articles, and amends 79 laws and 1203. The draft Law Number 11 of 2020 has drawn a lot of controversy and resistance from the public, because it is considered problematic both in terms of substance and formal requirements regarding its formation (formal defects).

In the process of forming the Ciptaker Law, it is considered that it has not involved stakeholders from the community, because there is no tika discussion with stakeholders or the public on the National Progles page of the Ciptaker Bill. As with the Omnibus Law method, discussions on the Ciptaker Law are divided based on clusters, this makes it difficult for stakeholders or the public to take part in observing the substance of the articles in it and adjusting between clusters if they have links, so it can be assumed that the drafting of the Ciptaker Law regulations seemed tacit and does not apply the principle of transparency. According to Article 96 of Law Number 12 of 2011 it states that "The public has the right to provide input orally and/or in writing in the Formation of Legislation."

In the formation of the Ciptaker Law it was seen that it ignored the application of the principles of forming good laws and regulations as stated in Article 5 of Law Number 12 of 2011 that one of the values is that there is a principle of openness in the process of forming Legislation starting from the planning stage , preparation, preparation, and discussion must be transparent and open. The principle of openness is one of the conditions that must be met by the Government and the DPR when forming a Legislation (Anggono, 2020). In addition to avoiding a Legislation being formally flawed, it also prevents the emergence of stigma or assumptions by stakeholders or the public that are resistant, as a result of feeling not involved in the process of forming Legislation. It should be noted that throughout the drafting process, the government was not open and never conveyed to the public the contents of the Ciptaker Bill, the new Bill can be accessed after the Government has drafted the Bill and submitted it to the DPR. In the absence of the principle of openness in the process of forming the Ciptaker Bill, which seems to be a lack of transparency and a lack of public participation. This is a problem in the formation of the Ciptaker Bill, in which the public should have the widest possible opportunity to give opinions and input in the formation of the Ciptaker Law regulations.

The formulation of the problem in this study is a). How does the non-fulfillment of the principle of openness in the formation of the Ciptaker Law affect the existence of the law itself? b). What should be the process of forming good and correct laws and regulations?

## II. RESEARCH METHOD

This study uses a normative juridical approach (normative legal research), namely by examining library materials or secondary data (Soekanto, 2007). This research was carried out with the object of research study from various secondary data consisting of materials originating from laws and regulations, legal theories, books, expert opinions in a systematic way in studying the foundations and principles of the formation of laws and regulations. According to Soekanto (2007) normative legal research is divided into:

- a. Research on legal principles.
- b. Research on legal systematics.
- c. Research on the level of legal synchronization vertically and horizontally.
- d. Legal comparison
- e. Legal history.

In this study, the scope of research will be carried out by drawing legal principles against written positive law (Soekanto, 2007). This research can be used to improve the design of laws and regulations according to good legal principles.

## III. RESULTS AND DISCUSSION

### 1. Job Creation

Job Creation is an effort to create jobs through efforts to facilitate, protect, and empower cooperatives and micro, small and medium enterprises, improve investment ecosystems and ease of doing business, as well as central government investment and acceleration of national strategic projects (Arham & Saleh, 2019) . Then in Article 1 point 1 of Law Number 11 of 2020 concerning Job Creation it is explained that Job Creation is an effort to create jobs through efforts to facilitate, protect and empower cooperatives and micro, small and medium enterprises, increase investment ecosystems and ease of doing business, and Central Government investment and acceleration of national strategic projects.

The formation of Law Number 11 of 2020 concerning Job Creation is a form of legal politics within the executive which is continued through the legislative process. The government carries out activities to determine ways or patterns in forming laws and updating laws through the legislative process. This will later form a legal policy that has the nature of a law that will be enforced to create jobs. This means that the legal politics of the Job Creation Law is the formation of law by applying the omnibus law in formulating laws to increase investment so as to create jobs.

The government views that to realize the goal of forming the Indonesian State Government and realizing a prosperous, just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This is to fulfill citizens' rights to work and a decent living for humanity through creation work (Chamdani et al., 2022).

With Job Creation, the government hopes to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and economic instability; To support job creation, it is necessary to adjust various regulatory aspects related to facilitation, protection and empowerment of cooperatives and micro, small and

medium enterprises, improving the investment ecosystem, and accelerating national strategic projects, including increasing the protection and welfare of workers.

## **2. Implementation of the Principle of Transparency in Forming Legislation**

Legislation can be said to be good if it fulfills at least three foundations, namely the philosophical basis, the sociological basis and the juridical basis. There is also something added, namely the political basis, namely the line of political policy which is the basis for directing the administration of the state.

Government regulations regulated through Law Number 14 of 2008 concerning Public Information Disclosure. Having the goal of knowing plans for making public policies, public policy programs, as well as reasons for making public decisions, public participation in the process of making public policies will encourage the active role of the community in making public decisions. policies and management of public bodies, this will create good, transparent, effective, efficient and accountable state administrators.

The right to obtain information is the right of all citizens and public information disclosure is one of the important characteristics of a democratic country that upholds people's sovereignty to realize good and transparent state administration. Public information disclosure is a means of optimizing public oversight regarding the administration of the state and other public bodies as well as everything related to the public interest. With public information, the public can control the administration of government in a transparent and accountable manner so as to limit arbitrariness in government.

The constitution does not only contain the division of powers in the form of the formation of state institutions and the limits of their powers, but also guarantees the rights of citizens. The guarantee of citizens' rights in the constitution is a form of transformation of human rights from moral rights to legal rights. In formulating and forming a statutory regulation, it is also necessary to pay attention to the principles that apply in forming statutory regulations.

The principles of forming laws and regulations are a guideline or a signpost in the formation of good laws and regulations (Mardiyati & Absi, 2022). According to Attamimi (1990), the principle of Formation of Legislation is "a legal principle that provides guidelines and guidance for pouring the contents of regulations into forms and arrangements that are appropriate for the use of appropriate formation methods, and for following predetermined formation processes and procedures." With this, the community has a wide space to be able to provide input and criticism on the formation of laws and regulations.

Government openness is a prerequisite for the creation of a democratic government, the principle of this openness must be understood significantly in various aspects of governance. Consistent application of the principle of openness in the process of forming laws and regulations will enable the resulting laws and regulations to be implemented effectively and efficiently. It is clear that the principle of openness in the process of forming regional regulations has an important role and function for the birth of responsive legislation products (Sulistiyo & Widayati, 2018).

The definition of the principle of openness itself is the principle that serves the public in gaining access to and obtaining correct, honest and non-discriminatory information in the administration of government while still paying attention to the protection of personal, group and state secret human rights.

Public participation is basically a guarantee that must be given to the public to be able to participate in the state administration process and access public policies freely and openly. This is the embodiment of a system that ideally wants sovereignty in the hands of the people.

### **3. Non-fulfillment of the Principle of Transparency in the Job Creation Law**

Since the enactment of Law No. 11 of 2020 concerning Job Creation, there have been many pros and cons circulating and speaking out. One of them is from the polemic after the passage of Law No. 11 of 2020 concerning Job Creation if observed and assessed from the point of view of the formation of laws and regulations indicates that there are formal legal defects in the process of making these laws and regulations. The community itself feels that they are not involved and there is no transparency in the process of its formation. Sovereignty in the hands of the people is not only identified with democracy, but also contains the values that belong to the Indonesian nation, namely deliberation to reach a consensus.

As stipulated in Article 96 of Law Number 12 of 2011 concerning Formation of Legislation that the formation of laws and regulations requires community participation. The public has the right to provide input verbally and/or in writing in the formation of laws and regulations through public hearings, working visits, outreach, seminars, workshops and/or discussions. Input from various parties is needed to reduce controversy.

The existence of the People's Representative Council (DPR) as a state institution that represents the people in parliament does not seem to be able to create a government that is open to the public. Some groups, such as workers, feel that the discussion process and the substance of the laws and regulations on Job Creation do not provide a sense of justice.

Violation of the principle of openness in the process of forming Law Number 11 of 2020 concerning Job Creation is fatal because it has violated Law Number 12 of 2011 concerning Formation of Legislation, so that the law that was formed can also be said to be procedurally flawed. Then in the process not all discussions were carried out openly, where the openness and involvement of elements of society seen in the mass media during the discussion only focused on the labor sector, in fact many trade unions felt they were not involved. Second, in the process of forming the Job Creation Law, the conditions for public participation, including the ease of accessing the Job Creation Draft Law before it was ratified, were also not fulfilled.

Flaws in the formation of the Job Creation Law were also pointed out by Professor of Constitutional Law at Padjadjaran University Susi Dwi Harijanti who stated that the process of forming the Job Creation Law violated the principle of openness because it was not transparent and had minimal public participation.

### **4. Implementation of the Principle of Openness which should exist in the Forming of the Job Creation Law**

The formation of aspirational and participatory laws and regulations contains two indicators, namely in the process and substance. This has implications for the process and substance of the rules made. This process implies a mechanism in the formation of laws and regulations that must be carried out in a transparent manner, so that from the aspirations of the people they can participate in providing input in regulating a problem that exists in a country so that the rules made can be in accordance with the applicable provisions. Aspirations (Riskiyono, 2015). As a rule of law and democracy, the application of the principle of openness should be carried out by a legislative body.

In line with the process of forming Legislation that must be transparent and open, Article 88 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation

states that, "The dissemination is carried out by the DPR and the Draft Laws, discussion of Draft Laws, to the Promulgation of Laws. Then in paragraph (2) it states that the dissemination as referred to in paragraph (1) is carried out to provide information and/or obtain input from the public and stakeholders.

In this way, it can be understood that in fact the process of its formation must meet the elements of transparency and openness so that the public can participate in providing input on legal products made by the government. Every formulation of laws and regulations in Indonesia must pay attention to the values contained in Pancasila, because Pancasila is not only the basis of the state but has a position as a legal ideal that must be imbued in every norm contained in the Law (Chandra et al., 2022).

Therefore, the laws that are formed must reflect the philosophical values that form the basis of the nation's ideals, including the values of justice and virtue so that the law is fully obeyed by the people and the law can be accepted by society. Public.

According to the Court, the involvement of the community to be actively involved in the process of forming statutory regulations is a necessity in an effort to ensure that the laws to be formed are truly in accordance with the expectations of the community, so society as a whole must bear the burden of shared responsibility to be actively involved. . to avoid the negative impact of the formation of laws and regulations formed by legislators who have passed verification.

In the theory of the formation of legislation itself also says that the legal products made must be in accordance with the principles of forming statutory regulations. Then according to Paul Scholten stated that the principle of forming proper legislation is not just a rule. Legal principles are not laws, but laws cannot be understood without legal principles.

Often a political interest is very coloring the carrying out of political goals. Therefore, interest in political interests is carried out by certain elements. In legislation products that should be government products that can regulate people's lives, but are often used by political elites to carry out their political missions in the process of making legal products. Because the goal of the political elite in applying the law becomes domination to achieve its goals. This can be seen when legal decision-making is in the hands of political elites, it is certain that the quality of the law is feared to be more dominated by political interests.

The process of establishing Law Number 11 of 2020 concerning Job Creation shows that the DPR and the government have not fully heeded the principle of forming laws and regulations contained in Law Number 12 of 2011 concerning the formation of laws and regulations, especially the principle of openness which has not been maximized in community involvement and easy access to information. that the DPR and the Government start from the planning stage to the final stage.

#### IV. CONCLUSION

Based on the results and discussion as described above, there are several conclusions that can be drawn. Setting the principle of openness in the formation of laws and regulations contains a provision that underlies the availability of information on the implementation of the formation of laws and regulations for all elements of society, but unfortunately not in its entirety. the process of making Law Number 11 of 2020 concerning Job Creation has violated the principle of transparency. This is because in the process of forming laws and regulations there must be participation from the community starting from the drafting stage to the end. Then during the deliberation stage in the DPR it must be carried out in a transparent, careful and unhurried manner. Also, the substance must be

ensured that it meets the material and formal requirements in the formation of statutory regulations as stipulated in Law Number 12 of 2011 concerning the formation of statutory regulations.

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