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Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia

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Abstract

The formation of responsive laws is an ideal form and a must in a country that adheres to democracy, the involvement of the community in the formation of laws and regulations is a form of implementation of democracy and popular sovereignty, so far the principles of the Formation of Legislation are regulated in Article 5 of Law Number 12 of 2011, but these principles are still formally operational and are considered unable to provide space for the community in conveying input that needs to be fulfilled in the mechanism of forming laws, so there needs to be an update on the principles of its formation. This research aims to find out how the idea of updating the norms of principles in the formation of laws in the future, the method in research uses legal research methods through approaches, data analysis is descriptive qualitative statute approach, conceptual approach, and case approach. the results of the study show that the formation of laws and regulations must certainly begin with a response to the existence of a legal problem that develops in society and there must be a regulatory solution, so that the formation of laws and regulations is not always based on political interests, certain groups or other interests, it is to avoid overregulation. The concept of responsiveness becomes urgent to be prioritized as a new norm of principles in the formation of good laws and regulations, because it can provide a two-way space between the legislator and the public quickly. the concept of responsiveness becomes a new idea in the new norm of the principles of good law formation, which has the character of strengthening the root foundation of the principle of openness and as a supporter (supporting) to the provisions of Article 96 Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Keyword: Renewal; Basic Norms; Responsive

1. INTRODUCTION

Indonesia is a state of law (*Rechtsstaat*) as affirmed in Article 1 paragraph (3) of the UUD NRI 1945. The concept of the rule of law adopted by the Indonesian state can actually be seen in the Preamble and the Body of the UUD NRI 1945, the Preamble and Article in the Body of the UUD NRI 1945 are used as the basis as a source of national legal politics. First, the Preamble and Article of the UUD NRI 1945 contain the purpose, basis, legal ideals, and basic norms of

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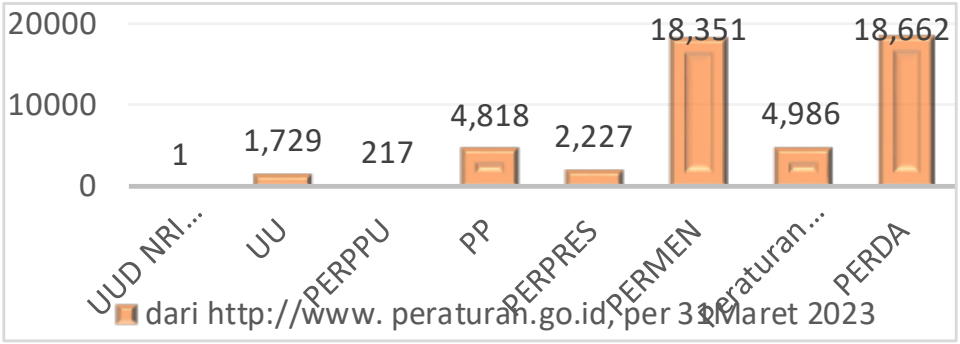
the Indonesian state which must be the purpose and foundation of Indonesian legal politics. Second, the Preamble and Article of the UUD NRI 1945 contain distinctive values derived from the views and culture of the Indonesian people inherited by the ancestors of the Indonesian people.[1] (The opening consists of 4 paragraphs. In the first, second and third paragraphs, the content explains previous events that influenced the formation of the Indonesian state. In the fourth paragraph, the contents explain the fundamental basics of the state such as the goals of the state, the form of the state, the provisions of the state Constitution, and the basic state philosophy of Pancasila.).

Constitutionally, national legal development is an effort to realize the conception of the rule of law in the life of the community, nation and state. National legal development is a real urgency in order to achieve state goals, namely an orderly, just, prosperous and prosperous society, material and spiritual.[2] One of the concerns in the current national legal development is the current legal formation in an overregulated condition, some even use the term obesity, uncontrolled regulation (overregulated), the impact of which has the potential to create disharmony between one regulation and another and overlap is a problem in the formation of legislation in Indonesia today. In the context of development, legislation is a means to support the realization of development goals.[3] The number of laws and regulations in Indonesia since independence until March 2023 is presented in the following data:

Image 1. Data on Laws and Regulations in Indonesia Since Independence Until March



Source: processed by researchers from secondary data, obtained from http://www. regulations.go.id, as of 31 March 2023

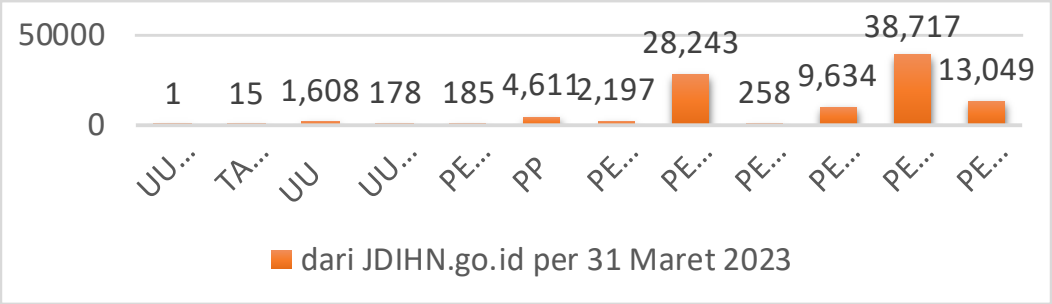
Based on the diagram data shows that since the beginning of independence until March 31, 2023, that the number of 1945 NRI Constitution is 1, the number of laws is 1,729, the number of government regulations in lieu of laws is 217, the number of government regulations is 4,818, the number of presidential regulations is 2,277, the number of ministerial regulations is 18,351, the number of agency regulations is 4,986,

1 Moh. Mahfud M.D, *Membangun Politik Hukum Menegakkan Konstitusi* (Jakarta: Pustaka LP3ES, 2006), 23.
2 Daud Rismana and Hariyanto Hariyanto, "Perspektif Teori Sistem Hukum Dalam Kebijakan Vaksinasi Di Tengah Pandemi Covid-19," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 3 (December 13, 2021), https://doi.org/10.29303/IUS.V9I3.951.
3 Anggita Yudanti and Wicipto Setiadi, "Problematika Pembentukan Regulasi Indonesia Dalam Perencanaan Pembentukan Regulasi Dengan Perencanaan Pembangunan Daerah," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, Number 1 (June 30, 2022): 27–40, https://doi.org/10.24090/VOLKSGEIST.V5I1.4973.

the number of regional regulations is 18,662, so the total number of laws and regulations in Indonesia is 51,040 with the largest number of regulations being regional regulations.

Data on the same types of regulations as mentioned above when compared to data from the National Legal Documentation and Information Network (JDIHN.go.id) there are significant differences, the occurrence of these differences shows that there is no good documentation of legal products, there is no synchronization of the data base of legal product documents between the Website of the Directorate General of Laws and Regulations of the Ministry of Law and Human Rights and the National Legal Documentation and Information Network (JDIHN.go.id). From the data obtained and processed, it shows that the number of laws and regulations in Indonesia since independence until March 31, 2023 is illustrated in the following data diagram:

Image 2 : Data on Laws And Regulations In Indonesia Since Independence Until March 2023 From Jdihn.Go.I



Source: processed by researchers from secondary data, obtained from JDIHN.go.id, as of March 31, 2023

Based on the diagram data shows that since the beginning of independence until March 31, 2023, based on the website of JDIHN.go.id, the number of UUD NRI 1945 Constitution is 1, the number of MPR Tap 15, the number of laws 1,608, the number of emergency laws 178, the number of government regulations in lieu of laws 185, the number of government regulations 4,611, the number of presidential regulations 2. 197, the number of ministerial regulations 28,243, the number of institutional regulations 258, the number of provincial regulations 9,634, the number of district regulations 38,717, the number of municipal regulations 13,049, so the total number of laws and regulations in Indonesia is 98,696. with the largest number of regulations being regional regulations.

The difference in the number of laws and regulations in Indonesia also shows a condition where the documentation system of laws and regulations becomes a problem that must be overcome, because the data presented by the government is not the same, with the number of regulations issued being very potential to overlap with each other and make existing regulations become increasingly overregulated. As a consequence of the choice of the rule of law, all aspects of life in the Indonesian society and government must always be based on the law, one of which is manifested in various state regulations.[4]

4 Daud Rismana, Hajar Salamah Salsabila Hariz, and Fenny Bintarawati, "Kajian Hukum Terhadap Efektifitas Perkuliahan Di Tengah Pandemi Covid-19," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (June 29, 2022): 53–68, https://doi.org/10.24090/VOLKSGEIST.V5I1.5137.

Based on the data above, it shows that there are many laws and regulations in Indonesia and the current condition of the legislation has been overregulated, even the laws that are filed for Judicial Review in the Constitutional Court are very numerous. The practice of forming laws so far is still not in accordance with the expectations of the people who view and see that the legislators, namely the DPR, the President, and the DPD, do not involve public participation in forming laws, so that the laws formed are considered unresponsive which ignores the feeling of community law.[5] The concept of judicial review is essentially related to the undemocratic nature of law formation, characterized by a lack of transparency and limited public participation.

The data obtained shows that the Constitutional Court from 2003 to March 31, 2023 showed that the number of applications for judicial review of the Law registered was 1,657 applications, with a total of 1,628 decisions on judicial review of the Law, with 298 decisions granted, 613 applications rejected, 25 applications failed, 510 applications were not accepted, 168 applications were withdrawn and 14 applications were not authorized.[6] Not to mention other legislative products under the law that are tested by the Supreme Court.

The number of tests of laws and regulations is a serious problem for the formation of laws and regulations in Indonesia, the current legislative condition has many problems including the large number of laws and regulations (overregulated), the number of overlapping laws and regulations, disharmony between regulations and the technical complexity of making laws and regulations, there is still a gap or distance for the public in providing input on draft laws and regulations. In addition, the system for the formation of laws and regulations still has problems, both before the formation of laws and regulations and after the enactment of laws and regulations. Omnibus is considered to be one way of approaching legislation that can resolve overlapping legislation in Indonesia.[7]

The development of Indonesian national law is predicated on the principle of the rule of law. Consequently, the creation of national law that is founded on the rule of law is a fundamental principle in the pursuit of a society that is orderly, just, and prosperous in both its physical and mental well-being. Beside Indonesia is a country that upholds the principles of democratic law, a fact that greatly affects its operations and governance.[8] The Indonesian State's basis is strengthened by the concept of the rule of law, which is deeply ingrained in the constitution. The reform era began in 1998 with the collapse of the New Order administration. One of the most fundamental need is national legal reform since it is anticipated to result in a responsive legal system. *(The basic idea is that the position of the responsive principle is an important part of the principles for the formation of laws and regulations, especially in the formation of responsive laws. The position of the responsive principle is a supporting principle for other principles, especially for the principle of openness. Responsive characteristics show the existence of people's sovereignty in the formation of legislative regulations, especially laws, because constitutionally the interests*

5 Josef Mario Monteiro, "Amendment of the Corruption Eradication Commission Act and Its Impact on the Constitution," *Jurnal Media Hukum* 28, no. 2 (December 2021): 184–93, https://doi.org/10.18196/JMH.V28I2.10941.

6 "Recapitulation of Law Case | The Constitutional Court of the Republic of Indonesia," n.d.

7 M. Misbahul Mujib, M. Iqbal, and Yuliannova Lestari, "Does Omnibus Law Affect the Indonesian Investment Regulations towards Chinese Investors?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, Number 2 (December 18, 2022): 179–97, https://doi.org/10.24090/VOLKSGEIST.V5I2.6838.

8 Hariyanto et al., "The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, Number 1 (June 30, 2023): 200–221, https://doi.org/10.19105/AL-LHKAM.V18I1.7403.

of society can be accommodated with certainty. With the characteristics of the responsive principle, legal certainty regarding the constitutional rights of every citizen can be guaranteed and achieved in future legal development and minimize the existence of judicial reviews.)

So far, the formation of laws and regulations has always struggled with issues related to overregulation/obesity, a system of community participation that is not maximized makes the principle of openness seem weak, many laws are petitioned for judicial review, therefore in order to provide solutions to these various problems, a new principle is needed as a new idea/idea in the principles of the formation of laws and regulations, a new breakthrough in the formation of the law is directed so that the concept of public participation in providing feedback is not unidirectional but is responded to in two directions, so that the principle of openness is getting stronger, the hope is that with the new principle the concept of community involvement can run well, so that national legal development can be realized according to public expectations. Law is not designed only to ensure legal certainty but also to foster the happiness and welfare of society.[9]

Indeed, if you want to implement the implementation of good legal politics in the formation of laws and regulations that reflect democracy in a state of law, there needs to be real involvement from the community as an ideal form in the formation of responsive laws and regulations, whether or not a law is responsive to the development of society depends on the politics of legislation and the principles of legislation adopted,[10] the role of the community in the formation of legislation reflects the existence of a people's sovereignty and democracy, so that ideal laws and regulations will be formed, interpreting democracy Baharuddin Lopa defines it as a government based on the will of the people, the sovereignty of the people. To realize this will, the right to equality and freedom must first be guaranteed.[11]

Several studies have elaborated on the problem of principles in the formation of laws, including Bayu Dwi Anggono (2014), with his research related to the Principles of Appropriate Content Material in the Formation of Laws, as well as their Legal Effects: Analysis of the Laws of the Republic of Indonesia Formed in the Reform Era (1999-2012), with one of the results showing that to avoid the formation of laws that have a tendency to favor or benefit parties or groups that are in power that are repressive and threaten the freedom of their citizens, the legislators must pay attention to and be guided by certain principles or principles in forming laws.

Marwan (2017) further emphasized in his research that the ideal concept of academic texts in the formation of responsive regional regulations is to make Pancasila and the 1945 Constitution the cornerstone of the state in outlining facts and demands society and established institutions with authority.

In addition, Muhammad Fadli (2021), also conducted research related to the Nature of Prolegnas in Realizing Good Law Formation Planning in Indonesia, in his research results showed that the concept of good law formation planning is the synchronization of law planning and national development planning, centralization of law planning

9 Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, Number 1 (June 29, 2022): 1–11, https://doi.org/10.24090/VOLKSGEIST.V5I1.6361.

10 Philipus M. Hadjon, *Ide Negara Hukum Dalam Sistem Ketatanegaraan Indonesia. Dalam Bagir Manan (Ed), Kedaulatan Rakyat, Hak Asasi Manusia, Dan Negara Hukum, Kumpulan Esai Guna Menghormati Sri Soemantri Martosoewignjo* (Jakarta: Gaya Media Pratama, 1996), 82.

11 Baharuddin lopa, *Pertumbuhan Demokrasi Penegakan Hukum Dan Perlindungan Hak Asasi Manusia* (Jakarta: PT Yarsif Wataampone, 1999), 7.

through the establishment of a special institution that has been mandated in UU Number 15 of 2019 concerning Amendments to UU Number 12 of 2011 concerning the Formation of Legislation and Optimizing monitoring and review of Post Legislative Scrutiny (PLS) and Pre-Legislative Scrutiny with the obligation of ex-ante analysis is a novelty of the concept of law formation planning in Indonesia.

Based on existing research, all have not focused on developing the concept of responsive thinking to become part of the norms of new principles in the formation of laws and regulations, with the norms there will be legal certainty, so that an ideal legislation is realized. Various problems that arise in the formation of laws, especially those related to community involvement in the formation of laws and regulations, require a new breakthrough in the construction of the concept of principles that are able to accommodate the interests of the community, not just receiving input but the legislator is obliged to respond and provide responses in two directions. This paper makes a new idea so that in the formation of laws there needs to be a new normative update that is used as a principle in the formation of laws in Indonesia, so that legal development can be achieved by producing a responsive law.

The specification of this research is normative juridical research,[12] normative juridical research is research on positive legal rules and legal principles carried out by evaluating legal rules, namely relevant laws and regulations. The method used in analyzing is descriptive qualitative data analysis, which is to present the data and information and then analyze it using several conclusions as findings from the research results, in this case whether the concept of new principles in the formation of future laws and regulations needs to be done, based on the data of existing laws and regulations that are very overregulated/overweight. According to Lexy J. Moleong, data analysis is an effort made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what is important and what is learned, and deciding what can be told to others.[13] Before drawing conclusions, the existing data is first examined using the teleological, systematic, comparative and historical interpretation model methods,[14] Furthermore, the conclusion drawn is done by drawing the results of the review of the data that has been analyzed and pursed by using deductive thinking, which is a way of thinking that is based on general matters and then drawn to a specific conclusion.

2. ANALYSIS AND DISCUSSION

2.1 Condition of Implementation of the Principles of Law Formation in Indonesia

Theo Huijbers in the book Philosophy of Law, explains legal principles as principles that are considered fundamental, or something that becomes the foundation of law.[15] These principles can also be called notions and values that become the starting point for thinking about law. A principle is a general proposition stated in general terms without

12 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan JurimRonny Hanitijo Soemitroetri* (Jakarta: Ghalia Indonesia, 1990), 11.

13 Lexy J. Moleong, "Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.," n.d., 248.

14 Jazim Hamidi, *Hermeneutika Hukum*, 1st ed. (Yogyakarta: UII Press, 2005), 53–57.

15 Theo Huijbers, *Filsafat Hukum* (Yogyakarta: Kanisius, 2010), 81.

suggesting specific ways of implementing it, which is applied to a series of actions to become the right guide for that action.[16]

Sajipto Raharjo on various occasions stated that Indonesia is the best and most complete "legal laboratory" in the world. Satijpto Rahardjo first introduced the concept of Progressive Law in his article, "Indonesia Needs Progressive Law Enforcement" published in Kompas Daily on June 15, 2002.[17] progressive legal perspective emphasizes the importance of human factors and human behavior compared to legislative aspects.[18] The reform era has provided a new spirit and awareness to carry out legal reform and build the Indonesian legal system, although public expectations for the realization of a rule of law that guarantees legal certainty and justice, from legislation, politicians and law enforcement officials do not get an equal response.

There are several requirements that need to be considered in conducting national legal reform, in order to produce a good legislation product and be responsive to the legal needs of the community. the requirements that can also be used as a measuring tool for the quality of law or legislation are as follows:[19]

1. positive rational
2. can be accounted for
3. useful
4. develop a sense of togetherness, harmony, unity and integrity
5. Promote truth, justice and the welfare of the people.
6. Prioritizing the perspective of the regulated/served interests and not the perspective of the regulating/serving interests.
7. Development of five senses, namely sense of belonging, sense of responsibility, senses of commitment, and sense of serving.
8. Based Law integratively.
9. based on ethics
10. Developing the related fundamental rights and obligations.
11. It cannot be used as a legal basis for abusing position, authority, power and power for the benefit of individuals or groups.
12. Developing a restorative justice response.
13. It's not a victimogenic factor.
14. It's not a criminogenic factor.
15. Supports the implementation of management elements: cooperation, coordination, integration, synchronization and simplification.
16. Based on the correct image of the object and the subject of the law, as a man equal dignity and dignity.
17. Development of five senses, namely sense of belonging, sense of responsibility, senses of commitment, and sense of serving.

To produce a product of legislation that meets the feelings of the people is not easy. It requires a high political will of the rulers, especially the legislature and the government

16 Sudikno Mertokusumo, *Mengenal Hukum* (Yogyakarta: Liberty, 2008), 34.

17 M. Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat, Urgensi, Dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (June 2018): 159–85, https://doi.org/10.22437/UJH.1.1.159-185.

18 Riris Ardhanariswari, "Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, Number 2 (December 27, 2023): 183–207, https://doi.org/10.24090/VOLKSGEIST.V6I2.9565.

19 Arief Gosita, "Reformasi Hukum Yang Berpihak Kepada Rakyat Dan Keadilan (Beberapa Catatan)," *Jurnal Keadilan (Lembaga Kajian Hukum Dan Keadilan* 1, no. 2 (2000).

from the center to the bottom. It also requires adequate knowledge and expertise regarding legal drafting, as well as society as an object and the subject of the law must act actively to give feedback and pressure in the framework of the reform of law and its enforcement.

The hope of achieving national legal development is now faced with a variety of conditions that are currently not ideal. Every law and policy made within the framework of the national legal system must have an Indonesian context.[20] There are many factors that lead to such a legal condition. In terms of the substance of the law, for example, there are still many positive legal substances that are not harmonized, causing difficulties in enforcement and legal uncertainty, as evidenced by the number of laws that have been applied for judicial review to the Constitutional Court. The positive legislation that exists today is also much disputed based only on momentary consideration and less touching the interests of the wider public.

On the component of the legal structure, weak law enforcement also contributes to the poor appearance of the law in society. This requires a continuous effort to carry out legal development through a mature planning in a comprehensive design of development, so that the expected national legal development can be realized. The development of the law will not be exempt from the existing legal policy, therefore the ideal legal policy approach should be used to create a good legal product namely the values of Pancasila and the purpose of the state as set out in the fourth paragraph of the Opening of the UUD 1945.[21]

The number of laws submitted by the Judicial Review makes a special issue for the legislators, as described by the author who indicates the number of applications for examination of the Law registered is a total of 1,657 applications, with the total number of judgments of the Test of the Act of 1,628 decisions, with judgment fulfilled a number of 298 decisions, rejected 613 applications, dismissed 25 applications, not accepted 510 requests, withdrawn 168 applications and invalidated 14 requests.

The author finds laws that have been completely overturned by the Constitutional Court, namely:

1. Law Number 20 of 2002 on Electricity (Constitutional Court Decision Number 001-021-022/PUU-I/2003, dated December 15, 2004);
2. UU No 45 of 1999 in conjunction with UU No 5 of 2000 concerning the Establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency, Puncak Jaya Regency, and Sorong City (Constitutional Court Decision Number 18/PUU-I/2003, dated November 11, 2004);
3. UU No 16 of 2003 on the Stipulation of Perpu No 2 of 2002 on Terrorism (Constitutional Court Decision Number 013/PUU-I/2003, dated July 23, 2004);
4. UU Number 27 of 2004 on the Truth and Reconciliation Commission (Constitutional Court Decision Number 006/PUU-IV/2006, dated December 7, 2006);
5. UU Number 16 of 2008 on Amendments to UU Number 45 of 2007 on the State Budget for Fiscal Year 2008 (Constitutional Court Decision Number 13/PUU-VI/2008, dated August 13, 2008);

20 Hariyanto Hariyanto, "Politik Hukum Dalam Legislasi Nasional," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 13, Number 2 (December 31, 2022): 297–312, https://doi.org/10.21043/YUDISIA.V13I2.16206.

21 Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 2023): 89–102, https://doi.org/10.24090/volksgeist.v6i1.7867.

6. UU Number 9/2009 on Education Legal Entities (Constitutional Court Decision Number 11-14-21-126 and 136/PUUVII/2009, dated March 31, 2010);
7. UU Number 4/PNPS/1963 on the Security of Printed Materials that Disturb Public Order in conjunction with UU Number 5 of 1969 on the Declaration of Various Presidential Determinations and Presidential Regulations as Laws (Constitutional Court Decision Number 6-13-20/PUU-VIII/2010, dated October 13, 2010);
8. UU Number 6/1954 on the Determination of the Right of Inquiry of the House of Representatives (Constitutional Court Decision Number 8/PUU-VIII/2010, dated January 31, 2011);
9. UU Number 4 of 2014 on the Stipulation of Perpu Number 1 of 2013 on the Second Amendment to UU Number 24 of 2003 on the Constitutional Court (Constitutional Court Decision Number 1-2/PUU-XII/2014, dated February 13, 2014);
10. UU Number 17/2012 on Cooperatives (Constitutional Court Decision Number 28/PUU-XI/2013, dated May 28, 2014);
11. UU Number 7/2004 on Water Resources (Constitutional Court Decision Number 85/PUU-XI/2013, dated February 18, 2015).

The laws that were applied for judicial review and abrogated in whole by the Constitutional Court because materially the laws were contrary to the UUD NRI 1945, this fact shows that on the implementation level there are also problems related to regulation in Indonesia i.e. the existence of regulations of laws that contradict each other both horizontally and vertically, inconsistencies of regulation, multitafsir regulations, and regulations that are not operational.[22] The existence of the Constitutional Court was constituted with the aim of verifying the compatibility between a lower legal norm and a higher legal norm.[23]

Indonesian law is experiencing a situation that Richard Susskind calls overregulated.[24] Or another term is legal obesity, where between laws one with the other occurs overlapping so creating a sectoral ego that results in legal uncertainty in its application. The fact shows, the number of legislative regulations in Indonesia, researchers found data according to http://www. regulation.go.id, as at 31 March 2023, 08.16 PM total total legislative norms in Indonesia is 51.041. with the most number of regulations are regional regulations.

Many of the existing laws and regulations in Indonesia are very likely to cause discrepancies in the foundations of the Constitution, so that in the constitution of the laws, regulations must be made and restored on the basis of the Creation of the Good Law and Regulation, even though the facts that exist are still not considered sufficiently capable to solve the issue of the formation of the law and regulation in Indonesia.

Indonesia is known to have a number of norms, including religious, solemnity, politeness, and legal norms. Through human obedience to the norms will be able to guarantee the existence of order in his life as a social being. It is not independent of the function of the norm itself as a benchmark or measure of human life in behavior or

22 Dian Sadiawati, *Strategi Nasional Reformasi Regulasi: Kementerian Perencanaan Dan Pembangunan Nasional* (Jakarta, 2015), 39.

23 Sugeng Riyadi, Muhammad Fauzan, and Asep Budiman, "The Urgency of Establishing Constitutional Court Procedural Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, Number 2 (December 27, 2023): 209–23, https://doi.org/10.24090/VOLKSGEIST.V6I2.9607.

24 "View of LEGAL INFORMATICS – A PERSONAL APPRAISAL OF CONTEXT AND PROGRESS | European Journal of Law and Technology," n.d.

action in its life. The nature of legal norms in the rule of law can be: orders; prohibitions; permissions; and exemptions (vrijstelling).[25]

As part of the national legal system, the rules of the laws that are hierarchically below must not conflict with the rules that are Hierarchically above. Thus, if a law passed by the Constitutional Court is contrary to the basic law, then the law does not reflect the foundations for the establishment of good legislative rules.

Laws that do not take into account and implement the foundations of legislative regulation are highly potentially tested many times by the public,[26] the Law Number 7 of 2017 on General Election became the law that is the most tested on the substance in the Constitutional Court, one of the articles that are frequently tested is the constitutionality test of the provisions of Article 222 of the Law Number 7 of 2017, which has been tested up to 13 (thirteen) times.[27]

The basis for the establishment of legislative regulations arose from the basis of a law-based state,[28] as stipulated in article 1, paragraph 3, of the NRI 1945 Rules of Procedure, which meant a regulation of the exercise of power formally restricted in and based on the UUD 1945, which was subsequently reaffirmed in the field of the formulation of regulations of legislation.[29] One way to find a legal basis is to look for general properties in a particular rule, but finding a legal base must be understood rather than in the context of formulating a rule of law that previously did not exist.[30] Sudikno Mertokusumo's opinion must be placed in the contemporary context, that is, in a long time after the emergence of the basis of law and the appearance of law itself. So the foundations of the law already existed, used as the basis for the formulation of the content of law, but then forgotten because of the nature of the unwritten foundations, until then there was a need to write them.[31]

There are 7 (seven) foundations selected from the various foundations developed by the legislators and adapted to the Formation of the Regulations of the Legislation in our country:[32]

1. clarity of purpose;
2. appropriate institution or forming official;
3. compatibility between type, hierarchy, and content material;
4. can be implemented;
5. usefulness and efficacy;

25 Rokilah Rokilah and Sulasno Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi : Jurnal Ilmu Hukum* 5, Number 2 (December 29, 2021): 179–90, https://doi.org/10.30656/AJUDIKASI.V5I2.3942.

26 Ahmad Zaini et al., "Presidential Nominations from Active Cabinet Ministers: A Delicate Balance between the Interpretation of Constitutional Court Decisions and Political Interests," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (December 31, 2023): 281–97, https://doi.org/10.24090/VOLKSGEIST.V6I2.9355.

27 Mahkamah Konstitusi, "Perkara | Mahkamah Konstitusi RI," Mahkamah Konstitusi Republik Indonesia, 2024, https://www.mkri.id/index.php?page = web.Perkara2&menu = 4.

28 Gani Abdul and S H Abdullah, "PENGANTAR MEMAHAMI UNDANG-UNDANG TENTANG PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN," *Jurnal Legislasi Indonesia* 1, Number 2 (November 29, 2018): 1–10, https://doi.org/10.54629/JLI.V1I2.270.

29 A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I-Pelita IV" (Program Pascasarjana Universitas Indonesia, 1990), 334–35, https://lib.ui.ac.id.

30 Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik* (Depok: Rajawali Pers, 2011).

31 Mardian Wibowo, *AAPUU: Asas-Asas Pengujian Undang-Undang* (Depok: PT. Raja Grafindo Persada, 2020), 47.

32 A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I-Pelita IV."

6. clarity of formulation; and
7. openness

These principles are formal principles in the formation of laws and regulations, from the 7 (seven) formal principles mentioned above, according to the author, based on the involvement of the public sphere, they are divided into 2 (two) spaces, namely first, operational formal, namely the principles that are in the space of the legislator (legislature), where the principle will automatically be attached to each legislator, the public (public) has no room to provide input (feedback), these principles are the principle of clarity of purpose, the principle of institutional or appropriate forming officials, the principle of conformity between type, hierarchy, and content material, the principle of implementability, the principle of usability and usefulness, and the principle of clarity of formulation.

Second, it is formally substantial, namely the principle that is in the sharing space between the legislators and the public, namely the principle of openness, with this principle of openness the public can provide input (feedback), although according to the author, the principle of openness is still one-way, namely only the legislators just receive input, but there is no guarantee to be responded quickly or the legislators provide an explanation of feedback from the public, considering that the provisions of Article 96 number 8 are only limited to using the word "can" so that there is no obligation attached.

Based on the provisions of Article 96, the public is given space to provide input to the legislator. The public has the right to provide input orally and/or in writing at every stage of the Formation of Laws and Regulations. The public, either individuals or groups of people who are directly affected and/or have an interest in the content material of the Draft Legislation, can provide input either online and/or offline. Van der Vlies discusses the principles of the formation of laws and regulations as "*beginselen van behooorlijke regelgeving*" (principles of the formation of good laws and regulations). Principles relate to norms that must be realized in government actions and which can be enforced by judges. For example, the principle of equal treatment of all citizens (gelijkheidsbeginsel).[33]

The principle of openness in the formation of good laws and regulations is often associated with community involvement in the formation of laws, meaning that the role of the community is very important, Constitutional Court Decision Number 91/PUU-XVIII/2020 which examines and decides on the formal testing of Law Number 11 of 2020 concerning Job Creation is one of the studies in this paper. The formation of Law Number 11 of 2020 concerning Job Creation based on the author's analysis has violated the principles of the formation of good laws and regulations stipulated in the provisions of Article 5.

Community involvement in the formation of laws and regulations is very important, it actually shows that the sovereignty of the people in the formation of laws can be implemented and run well. In achieving legal development targets to welcome Indonesia's Vision 2045, the politics of legal development (as a strategic vision) needs to be formulated and agreed upon by all components responsible for establishing policies and laws and regulations, which must also be welcomed on an ongoing basis by government officials and organizers in general, until finally it can provide a positive outcome in its application in social life. National legal development can be achieved if the entire scope related to it can be functioned as a means to renew society (social engineering), to

33 Van der Vlies, Handboek Wetgeving (Zwolle: Tjeenk Willink, 1987), 175.

carry out the development and renewal of law as a system, good planning is needed as a projection of future development.

As long as this foundation of openness is still not enough to give room for the public to give feedback because it is still one-way, so it requires a breakthrough of a new foundation that later becomes a strengthening foundation and as a supporting (supporting) of the foundation, researchers create a new idea of a foundation which can give a two-way space between the Legislature and society quickly, that is a responsive foundation.

The stage of public participation in Indonesia is still in the consultation phase. This is because Indonesia is making a battle against the public in legislation, but the final decision remains in the hands of the legislature. The public is not only informed but also invited to share opinions, although there is no guarantee that the opinions expressed will be taken into account in decision-making. Furthermore, there is no guarantee that the participating community groups are affected or associated with a draft law.

Unlike the South African country that's already in the placation phase. South Africa's position to advance public participation was reflected in the Birchwood Conference in 2006, which brought together representatives of all the legislators and stakeholders of the South African legislative sector, including civil society organizations, which produced a number of important recommendations, one of which was the importance of the need for public involvement in all committees.

The ideal participation model in Indonesia, according to the researchers, is at least a model that can provide certainty and space for the public directly in providing input to the policy plan to be taken, the collaboration between the model A basic model of public participation and meaningful participation becomes a representative participatory model in responsive legislation, looking at the basic aspects of legislation today, legislation has not yet considered its responsive aspects.

2.2. Responsive Concepts As a New Basic Norm

One of the essential elements for producing a responsive legal product is public participation. Nonet and Selznick argued that the importance of the role of society in the formation of the legal product should be seen in the participatory process of its formation by inviting as much participation of all elements of society, both from the point of view of individuals and groups of society. Besides, it must also be an aspirational source of the desire or will of the society. This means that the product of the law is not the will of the ruler to legitimize his power.[34]

In order for public participation to be realized well and maximum, so far the basis used is only the basis of openness only, which still needs to be strengthened with other foundations, according to the researchers the foundation of open-mindedness as a basis of substantial formal nature that gives space to the public to give input but is only one direction, then it is necessary to strengthen with a foundation characterized by giving space to quickly respond and in 2 (two) directions / feedback.

Through this time, the creation of legislative regulations has always been subject to overregulated/obesity issues, the system of non-maximum public participation makes the foundation of openness impressively weak, the number of laws applied for judicial review, therefore in order to provide solutions to the various kinds of issues,

34 Kana Kurnia, Andi Budyadjie Pradipta, and Indra Rizqullah Fawwaz, "Problematika Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 20, no. 1 (March 2023): 123–35, https://doi.org/10.54629/JLI.V20I1.1092

it is necessary to create a new foundation as a new idea/idea in the foundations of the formulation of regulatory legislation.

New breakthroughs in the creation of such legislation are directed to ensure that the concept of public participation in giving input (feedback) is not directed but responded in two directions, so that the foundation of openness is becoming stronger, hopes with the presence of a new foundation the notion of public involvement can work well, so the development of national law can be realized according to the expectations of the people. Public participation is closely related to the basis of openness in the formulation of legislation which must include maximum and more meaningful participation so that genuine public participation and involvement can be created.

The responsive concept promoted as the new norm is based on the real conditions in society that often in giving input is still a one-way nature, so the substance inserted in the law is sometimes not well controlled, between input with results often there are differences, the impact of which laws formed by the formulation of legislation many are applied judicial review to the Constitutional Court of RI. With the presence of a responsive basis in the formation of legislative regulations in particular the creation of laws then the responsive foundation can also be used as a test stone / test for the Court of Constitution.

Public involvement in legislation when implementing good legal policies will reflect the sovereignty of the people and realize democracy in the rule of law, so that real participation of the society as an ideal form in responsive legislation can be realized. It means that from the outset the planning of making a law is based on the response of the public, not on political or other interests.

The responsive basis in the formulation of the laws is to serve as a balancing system between the legislature and the public in the legislation and to provide supporting (supporting) to the system of public participation, the responsive foundation can strengthen the foundation of openness which, in the opinion of the researchers, the basic transparency regulated in the provisions of article 5 letter g is not able to accommodate properly when there is input from the public. Responsive foundation is a form of foundation that grows out of tradition and custom, studies and opinions of experts almost all agree that the formulation of legislative regulations must be responsive, and to the concept there is no rejection either of experts or of society, it shows that the concept of responsive becomes a tradition that must be consolidated as a foundation which can lead in the formation of good legislative norms, especially the law.

Soetandyo Wignjosoebroto, who explains that the tradition that has been accepted and obeyed by the society in its quality as the moral foundations will live in the Sanskrit of the citizens as part of the living law. With the moral substance, the law that lives in this society will never be broken will always be adhered to by the members of the society as a set of normative guidelines that will guide the behavior that is considered most worthy in the society.[35] Practice developed into tradition, and in turn tradition developed into law, even in trials at the Constitutional Court of RI the emergence of the basis in trial can derive from custom or tradition that continued over a certain period of time without receiving rejection from the parties requested confirmed by the Constitution Court as a

35 Soetandyo Wignjosoebroto, *Hukum Dalam Masyarakat* (Jakarta: Graha Ilmu, 2013), 10.

legal basis of the event.[36] Thus formed a foundation of at least the elements of the theory of law, law and practice of law.

The responsive concept in turn develops into law, in this context then the responsive concepts become the basis that needs to be normalized in positive law and enter into the foundations of the formation of regulations of good legislation, Given the concept of responsive law as in his opinion Mahfud MD can be seen its indicators by looking at the creation of regulation of legislation which has character (1) its creation participative, (2) its load aspiratif, and (3) the details of its content limitative. Thus, by formalizing the concept of responsive in positive law can have the strength of legal certainty, for the realization of the establishment of democratic legislative regulations based on the sovereignty of the people as a reflection of the values of Pancasila.

The expansion of meaningful participation which was initiated by researchers as a responsive principle into the idea of a new principle for the formation of laws, the characteristics of the responsive principle are:

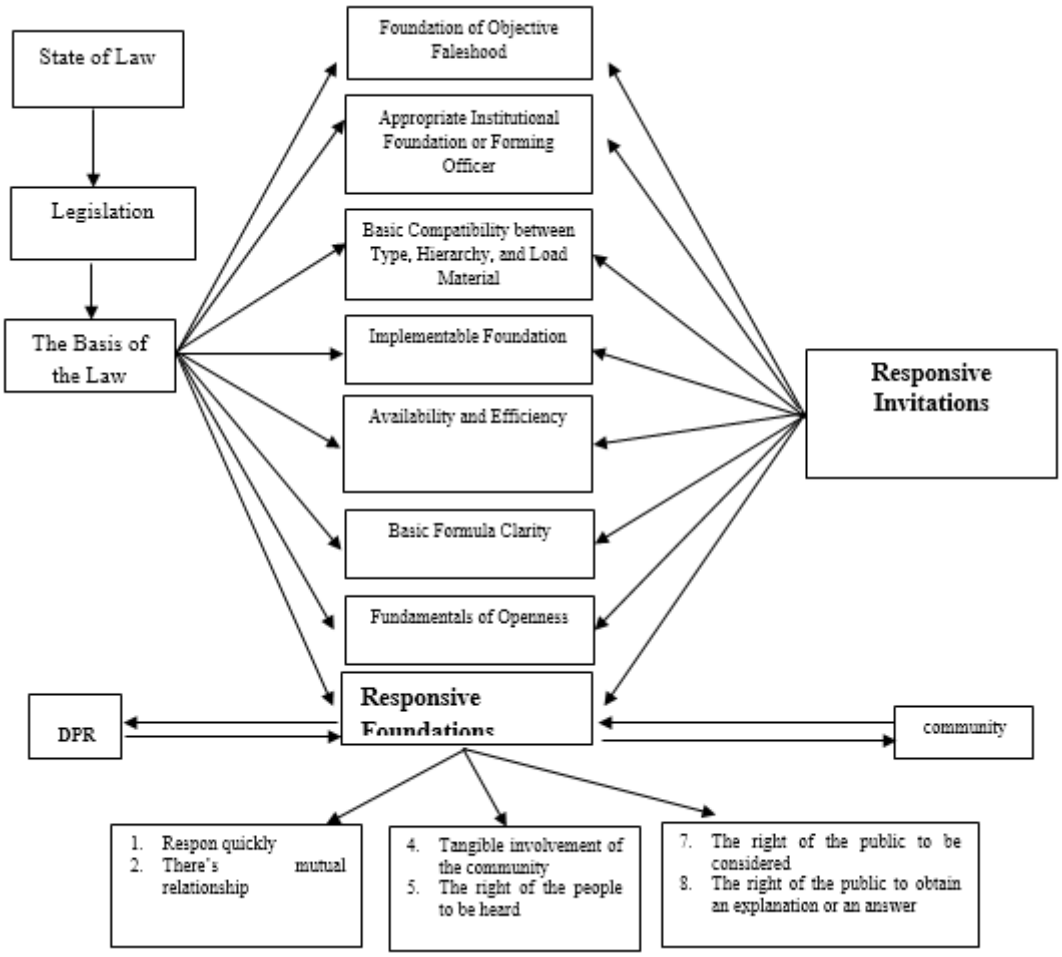
a. There is an active effort to respond quickly (fast response), meaning that legislators must actively respond immediately when they receive information, input or complaints from the public regarding problems faced by society and must be decided immediately through a policy in the form of a law.
b. the existence of a reciprocal (two-way) relationship between the community and the legislators, meaning that the legislators must be balanced in providing responses, not just receiving information, input or complaints from the public; However, there needs to be feedback so that there is legal certainty for the public regarding the information, input or complaints that have been submitted.
c. there is real involvement of the community in every decision-making process, meaning that community involvement does not differentiate between minorities and the majority, there must be real and balanced involvement of both minorities and the majority since planning the formation of laws, so that the goal of democracy in the formation of laws is legislation can be achieved, including being given space to provide input in the form of proposed draft Bills and draft NAs;
d. there is a right of the community to have their opinions heard (rights to be heard), meaning that any input from the community, legislators as representatives of the community must pay attention to it, this is to avoid the potential for the interests of the community to be ignored by many of their opinions and only prioritize opinions for the interests of their group or class. Alone;
e. the existence of the community's right to have their opinions considered (rights to be conceded); This means that legislators must provide space for the public to allow their opinions/input to be considered above the interests of groups or factions in every policy that will be taken.
f. the existence of the public's right to obtain an explanation or answer to the opinion given (rights to an explanation), meaning that as a form of openness (transparency) in every policy that will be made, the space that has been given to the public in expressing their opinion needs to be given an answer/explanation, whether their input is accommodated or ignored.,

Based on the description of the previous obstacles, the author makes a diagram scheme of the formation of the law based on the characteristics of the responsive foundation

36 Wibowo, *AAPUU: Asas-Asas Pengujian Undang-Undang*, 50.

that is shaped into a new foundation in the formulation of good legislative regulation, as follows:

Image : 3. A Legal Scheme Characterized By A Responsive Basis



Based on the above scheme, the position of the foundations of the formulation of good legislative regulations becomes an important element in the realization of a responsive law, the existing foundations need to be supported with the concept of the mutual relationship between legislation and society, then the responsive basis becomes urgent to be prioritized as a new basic norm in the formation of good regulatory regulations, with the characteristics of the respondent basis being:

a. There is an active effort to respond quickly (fast response);
b. the existence of a mutual relationship (two-way) between society and the legislature;
c. There is a tangible involvement of the public in every decision-making process;
d. the right of the public to be heard; the existence of the public's right to have their opinions heard (rights to be heard);
e. the existence of the community's right to have their opinions considered (rights to be conceded);
f. There is a right of the public to obtain an explanation or an answer to a given opinion (rights to an explanation).

From the chart created, showing that the responsive basic position with its characteristics of being a strong building root in the formation of legislative regulations,

with the presence of a responsive base that forms a strong root/position of the development of law, it is expected that in the future the formation will be stronger and stronger in the realization of responsive legislation, the participation and involvement of the public is a reflection of the sovereignty of the people in the construction of law in Indonesia.

Indonesia as a legal state with a system of state maintenance based on laws implemented in the formulation of laws, then the formation of responsive laws into one of the forms of formation of legislative regulations ideal as a form of reflection of democracy and the sovereignty of the people, therefore in the forming of laws should pay attention to the dynamic conditions of the society especially with the position of the law as a tool of social engineering (Law as tool of Social Engineering), then the law should follow the development of dynamic society so that in the creation of legislation need to be responsive. In the development aspect, the law functions in society as a driver and security of development and its results. This is the role of the law as a means of changing society (law as tool of social engineering).[37]

At present, the foundations of the formulation of good legislation and regulation have not respected responsive as the basis, therefore, in order to realize the legal certainty and sovereignty is in the hands of the people, then responsive should be respected as one of the bases of the formation of regulation and legislation good as a form of development of national law to be implemented in a planned, integrated, and sustainable manner and guarantee the protection of the rights and obligations of all the people of Indonesia.

The responsive aspect is characterized by a proactive effort to respond promptly, a reciprocal (two-way) relationship between the community and the legislators, genuine community involvement in all decision-making processes, the community's right to have their opinions heard (rights to be heard), the public's right to have their opinions considered (rights to be conceded), and the public's right to receive an explanation or response to the opinion given (rights to an explanation).

It is the characteristic of the responsive aspect that the researchers conceived as the recommended responsive foundation as a new foundation in the formulation of good legislative regulations, and should be formed as the foundation part of the forming of good regulatory regulations in the future.

III. CONCLUSION

The concept of responsiveness is a novel concept in the new norms of the principles of forming good laws. It serves as a balancing system between legislators and society in the formation of laws, thereby strengthening the foundational roots of the principle of openness. The principle of responsiveness encompasses the following: the right to a prompt response; the right to a reciprocal (two-way) relationship between the community and the legislators; the right to genuine community involvement in all decision-making processes; the right of the public to have their opinions heard (rights to be heard); the right of the community to have their opinions considered (rights to be conceded); and the right of the public to obtain an explanation or answer to the opinion given (rights to an explanation). Therefore, the responsive principle's position ultimately strengthens the roots/foundations for the formulation of statutory regulations, and a model of "Umbrella Principles" will be established to guide the development of effective legislative regulations in the future.

37 Hariyanto Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, Number 1 (June 7, 2018): 53–63, https://doi.org/10.24090/VOLKSGEIST.V1I1.1731.

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