

# Improving the Efficiency and Effectiveness Principles in Making Laws: Challenges and Opportunities

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**ABSTRACT---** *As a constitutional state, the administration of government in Indonesia is based on statutory regulations. The process of establishing laws in Indonesia requires a gradual process and takes a long time. Starting from the stages of planning, drafting, discussion, ratification, until the enactment stage. Hence, one of the most essential stages in the formation of legislation in the planning stage through the National Legislation Program. This paper is a normative legal research with using statute, conceptual, and comparison approaches. The results show that the comparison of the number of bills in the national legislation program with the number of bills successfully enacted is vastly different. However, as it turns out into practice, this phenomenon occurs almost every year without any efforts to improve the legislation system. The number of bills in the National Legislation Program 2010-2014 totaled 258 bills, while only 83 bills were successfully completed, or only 16 percent according to the National Legislation Program. Indeed, Indonesia should apply the principles of efficiency and effectiveness consequently as basic principles in making laws.*

**Keywords---** *Laws; Efficiency; Effectiveness; National Legislation Program*

## I. INTRODUCTION

The existence of laws in a country has a strategic and important position, both seen from the conception of the rule of law, the hierarchy of legal norms, and viewed from the function of the law in general. In the conception of the rule of law, the law is one form of the formulation of legal norms in state life. Paul Sholten states that the law is in the legislation, so the people should put it in a high place (Atok, 2015).

In a modern state of law, the function of statutory regulations not only gives shape to the values and norms that apply and live in society, and the law is not just a product of the state's function in the regulatory field. Legislation is one of the instruments to regulate and direct the people's life towards the expected ideals. The process of making a law takes a long time and gradually follows the stages of making laws and regulations in general as stated in Article 1 number 1 of Law Number 12 of 2011 regarding Formulation of Regulatory Legislation, the making of legislation includes the stages of planning, drafting, discussion, ratification or stipulation, and enactment. If seen from the definition, forming of legislation is an activity similar to management activities in an organization. Henry L. Sisk defines management as the coordination of all sources (human resources, funds, materials, time, work

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methods, and places) through the process of planning, organizing, directing, and controlling in order to achieve the desired goals.

According to Nawawi (2015), management activities are characterized by activities or efforts to plan, organize, direct, coordinate and supervise activities within an organization which eventually aim the achievement of organizational goals efficiently and effectively. The process of making a law that starts from the planning stage to the enactment stage also requires coordination of all available resources within the organization (legislative body) in order to achieve organizational goals namely the ratification of a Bill (RUU) that begins with planning on drafting the Bill. The basic principles used in management to effectively and efficiently achieve organizational goals are things that should be applied in law makings in Indonesia.

One of the most crucial stages in the lawmaking is the planning stage. The stages of planning on making a law are carried out through the National Legislation Program (*Prolegnas*). *Prolegnas* is determined annually and in a medium period of time based on priority scale. As is known, there are many Bills that are included in the priority list of national legislation programs or substantially very important (urgent) to be immediately discussed and enacted but are still protracted in the discussion stage without having a certain time to be completed. In addition, a number of bills never reached the targets in the *Prolegnas* planning; even some of them that were passed were not in accordance with the planning in the *Prolegnas* priority. Some of the factors that become obstacles such as the complexity of the substance regulated, the time of the discussion which is not enough, the debate in the discussion about the material has not met an agreement or meeting point and the most dominant is the influence of political interests in the legislative body. According to Mahfud (2006), legislative activities (making laws), in fact, make more political decisions compared to carrying out the actual law, especially if the legal work is associated with procedural problems. It seems clear that the legislative body (which enacts legal products) is actually closer to politics than to the law itself.

The influence of political interests also influences the length of the process of making a law due to the playing of interests in the legislative body. Finally, the impact on the number of bills passed never reached the target. While the legal dynamics and the community's need for legal certainty and the very rapid development of the community will not wait for the uncertainty of the time the law was made. Therefore, the author intends to examine more deeply the process of lawmaking, especially the applying the principles of efficiency and effectiveness in a management into the lawmaking, so that the lawmaking in Indonesia is expected to be carried out effectively and efficiently.

## **II. METHODOLOGY**

This research is a normative-legal research using a statute, case, and conceptual approaches (Marzuki, 2009). Data will be provided from primary and secondary legal materials. The primary legal materials resulted from some relevant laws and legislation. Those legal material collected are analysed descriptively related to the problems and prescriptively.

### III. RESULTS

#### *Legal Policy in Making the Laws in Indonesia*

The stages of forming legislations that begin from planning to enactment require a long time which usually takes months or even years. This is inseparable from political influence, especially the lawmaking that requires joint agreement between the executive and legislative bodies (DPR). Among all the types of legislations, only laws require the approval of the DPR. According to Wietholter, law is not a symptom of neutral value-free, but that in it, it is stated immanent linkages with politics (Sidharta, 2008). Judging from the theory of the *Trias Politica* of Montesquieu, a democratic country generally places or gives people decisive political power within the state. This pattern inspired the founding of the Indonesia when the 1945 Constitution was formulated so that in the 1945 Constitution both the central and regional legislative bodies occupy a strategic position in determining policies within the state or region (Moenta, 2017).

The lawmaking is also strongly influenced by the politics of law of the legislators. According to Mahfud MD, as legal policy, the meaning of politics of law is the direction or desire intended by the makers of the Constitution / Law when the contents of the Constitution / Law are made through debate in institutions making it then formulated in legal sentences. In other words, if it is reversed, the debate in parliament can show 'political law' or the desired direction about the law which is then enacted in the constitution. In this context, politics of law can be explored by historical interpretation of the background of the content of the law. This is based on the fact that legal products are the crystallization or formalization of various competing political wills and debates (Mahfud, 2011).

The consequence of a political debate that affects the stages of making a law is that the laws that are formed are inseparable from the interests of the parties involved in them. If the interests of the parties can be accommodated, then the completion of a law will run faster than usual, and vice versa, if the interests of the parties are difficult to be accommodated or to meet a meeting point, there will be a problem and the time to finish the law cannot be ensured to meet a common ground among all parties.

Management activities are characterized by activities or efforts to plan, organize, direct, coordinate and supervise activities in an organization which eventually aim to achieve organizational goals efficiently and effectively. According to Ibrahim (2008), management is the integration of planning, organizing, implementing, and monitoring/ evaluating. Management is a system, that is why if one of the sub-systems does not play a role properly, mismanagement will occur (mismanaged). One of the most important management sub-systems is planning. Robbins and Coulter define planning as a process that starts from setting organizational goals, determining strategies for achieving the overall goals of the organization, and formulating a comprehensive planning system to integrate and coordinate all organizational work to achieve organizational goals. Planning is a process that involves defining the organization's goals, establishing an overall strategy to achieve those goals, and developing a comprehensive set of plans to integrate and coordinate organizational work. Robbins and Coulter explain that there are at least four functions of planning, those are planning functions as direction, planning minimizes the impact of change, planning minimizes waste and planning sets standards in quality control (Nugroho, 2011).

The lawmaking and regulations is a form of a series of public policy making management processes. According to the continental view in the science of public policy, law is one form of public policy, both in terms of form and

product, process, or in terms of content. The essence of public policy is a policy made by the government that has the authority as a policy maker to direct in order to achieve certain goals for shared life in society, which in its preparation goes through various stages (Kurniawan & Lutfi, 2017). The public policy process of management science deals with five stages namely Planning, Formulating, Implementing, Leading and Controlling. The stages basically have in common with the stages needed in the process of forming the existing legislation. Starting from planning to monitoring and reviewing as a form of control or evaluation of the laws that have been enacted as regulated in Law Number 15 of 2019 regarding Amendments to Law Number 12 of 2011 regarding Formulation of Regulatory Legislation.

### ***Ideas for Efficiency and Effectiveness Principles in Lawmaking***

One of the important stages of law formation is the planning stage. Planning for the lawmaking includes a process in which the DPR and the Government prepare a plan and priority scale for laws made by the DPR within a certain period of time. This process is done by a program called *Prolegnas*. The existence of *Prolegnas* as an instrument for planning a planned, integrated and systematic lawmaking program (Riskiyono, 2017). *Prolegnas* are set annually and for a medium period of time based on the priority scale of the formation of the bill. The bills that have been prepared in the Medium Term *Prolegnas* and the annual Priority *Prolegnas* are sorted by the priority of the discussion.

In planning, the organization's targets or achievements should be determined, as well as how to maximize available resources (time, energy, and budget) that are available to achieve organizational goals, including planning to make a law. However, various problems are still encountered in the formation of legislation, especially in the planning stages. Another problem in the planning of the Law According to Ronald Rofiandri, is that legislation planning is not integrated with development planning as there are still a number of bills that are not synchronous between the Medium-Term Development Plan (RPJMN) and *Prolegnas* proposed by the Government. The mismatch of planning the lawmaking with the government development plan causes mismanagement because one of the sub-systems of lawmaking does not play a role properly which will result in the goal of lawmaking not being achieved effectively. So it is necessary to synchronize the National Development Plan with the Lawmaking Plan.

The success reflection of the lawmaking can be seen from the achievements of planning for the lawmaking in the National Legislation Program (*Prolegnas*). 380 Bills are included in the 2011-2016 *Prolegnas* Priority list. 45 (forty-five) bills were successfully passed and 11.8% of the bills that were successfully passed to *Prolegnas* cost Rp. 2,375.8 billion. In 2004-2009, the number of bills contained in *Prolegnas* was 284, successfully passed 193 laws, and only 54 Laws (19 percent) were in accordance with the 2005-2009 *Prolegnas* bills. In the 2009-2014 era, the number of bills contained in the 2010-2014 National Legislation Program was 258 bills, 83 bills were successfully completed, and even then only 44 (16 percent) were in accordance with the 2010-2014 National Legislation Program. This shows the level of input in the planning of the bill and the output produced in the form of laws that was successfully passed was very biased.

Based on the Monitoring and Evaluation Data of the National Legal Development Bureau (BPHN, 2019) until June 2019, of the 189 total bills in the 2015-2019 National Legislation Program, the realization of the Prioritized bills passed was 26 (twenty six) bills consisting of 15 (fifteen) proposals from the DPR and 11 (eleven) Government proposals, while the realization of 43 (forty three) Bills of Open Cumulative List consisting of 26 (twenty six)

ratifications, 10 (ten) bills related to the State Budget (APBN), 6 (six) Government Regulation to Replace Law (Perppu) related, and the result of the Constitutional Court (MK) Decision 1 (one) law. The data show that the target in the planning stage (*Prolegnas*) has never been reached to 100 (one hundred) percent or even 50 (fifty) percent.

As is known, the law which is currently a guideline in the drafting of laws and regulations in Indonesia is Law Number 12 of 2011 regarding Formulation of Regulatory Legislation. Article 5 of Law Number 12 of 2011 regarding Formulation of Regulatory Legislation and Regulations states that in formulating legislation, it must be carried out based on the principle of Formulating good Regulations, which include: a. clarity of purpose; b. the appropriate institutional or formulation authority; c. conformity between type, hierarchy, and material content; d. can be implemented; e. usability and usefulness; f. clarity of formulation; and g. openness. The contents of the laws and regulations must meet the principles of the formation. In the provisions of that Article, none of the principles can be used as a basic principle in making laws effectively and efficiently.

The principle of formulating laws and regulations set out in Law Number 12 of 2011 regarding Formulation of Regulatory Legislation should contain the principle of efficiency and effectiveness as one of the basic principles that forms the basis of the process of making laws and regulations in Indonesia by the government or legislative institutions so that the lawmaking can be formed in accordance with planning. The two principles are not new things regulated in the administration of government in Indonesia. However, those two principles are also regulated in the provisions of Article 58 of the Law of the Republic of Indonesia Number 23 of 2014 regarding Regional Government.

Based on the explanation of that article, it is stated that what is meant by the principle of efficiency is the principle which is oriented towards minimizing the use of resources in the administration of the state to achieve the best work results, whereas what is meant by the principle of effectiveness is the principle which is oriented towards effective and efficient goals. The principle of efficiency and effectiveness in achieving the objectives of a management should be applied in the lawmaking. Conceptually, efficiency is the ability to complete a job correctly, achieved by calculating the ratio of output and input. How much cost incurred to achieve the goal compared to the results or income received from the achievement of these goals, while effectiveness is the ability to choose various alternatives that exist to achieve the desired goals (Nawawi, 2015).

By applying these two basic principles in the process of making laws and regulations, especially the conditions for the formulation of the existing laws, it is expected that the process of making a law has its own time management so that it has certainty in the time of completion and can make efficient use of the existing budget. Likewise, the objectives set in the National Legislation Program in the form of a list of priority bills (based on need) for the law must be completed on time according to plan, both annual and medium term priorities. Therefore, politics of law is needed from the government to accommodate the inclusion of efficiency and effectiveness principles in the principles of formulating the legislation, especially the lawmaking in Indonesia in the renewal of Law Number 12 of 2011 regarding Formulation of Regulatory Legislation in the future.

## IV. CONCLUSION

The process of making legislation (laws) in Indonesia still faces some obstacles, one of which is the difficulty of achieving the planned targets in the National Legislation Program for several periods, so that the bills passed do not correspond to the targets set out in the list of priority order of the *Prolegnas*. Additionally, the lawmaking has not been integrated with national development plans. Therefore, the Government, Legislative Institutions and Stakeholders should think of solutions to overcome these problems; one of the solutions to these problems is to apply efficiency and effectiveness principles in the lawmaking in Indonesia and integrate national development planning and legislative planning. Technically, it can be done through government politics of law with the revision of Law Number 12 of 2011 regarding Formulation of Regulatory Legislation by integrating those principles into the provisions of Article 5 of Law Number 12 of 2011 regarding Formulation of Regulatory Legislation as a basis for the Formulation of Regulatory Legislation. In this way, it is hoped that the management of the lawmaking in Indonesia can achieve its objectives efficiently and effectively.

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