The Must Of Academic Text And Their Normative Effect On Quality Of Law

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Abstract: Article 43 of Law Number 12 of 2011 concerning the Establishment of Legislation clearly stipulates that Academic Manuscripts are a condition that must be fulfilled in the process of establishing legislation, with the hope that the resulting legislation becomes an effective and efficient product to fulfill community legal needs. It's just that empirically, this necessity is only fulfilled as a formality so that the process of forming laws is in accordance with the procedures stipulated through legislation. With a pattern like this, finally the quality of the Act is not significantly affected, with the existence of laws that are not in accordance with the material content, or unable to accommodate the legal needs of all Indonesian people, so judicial review must be submitted to the Constitutional Court. This empirical situation is interesting to study by taking a sample of the Act produced after the enactment of Law Number 12 of 2011. The study was conducted by asking the question why the Academic Script is required does not affect the quality of the law produced? The question becomes very important to solve because there will be found factors or argumentative reasons that are the cause of the infertility of Academic Scripts to produce quality laws.

Keywords: Academic Script, Law, quality, judicial review.

1. INTRODUCTION

The current politics of the laws and regulations in Indonesia require Academic Scripts in the formulation of legislation. Article 43 of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations clearly determines that the Draft Law originating from the DPR, the President, or the DPD must be accompanied by an Academic Paper. With this provision, Academic Manuscripts become a requirement that must be fulfilled in the process of establishing legislation, with the hope that the resulting legislation becomes an effective and efficient product to meet the legal needs of the community, and seems to be considered a mere formality. As an example of this reality can refer to the Law on Social Conflict Management and the Law on Community Organizations (Anggono, 2014). Other laws that can be appointed are the State Civil Apparatus Act and the Tax Amnesty Law. The law was appointed because based on the results of monitoring and assessment from study centers and non-governmental organizations, the content material was not ideal and did not form the root cause of the community. In fact, the law was formed using Academic Scripts. Extremely wanted to be stated that the existence of Academic Manuscripts in the process of forming laws has not significantly affected the quality of a law. Not to mention if, the Law produced was judging by a review to the Constitutional Court, the costs incurred to produce a product of law will increase (Indonesian Statistics, 2017). Thus, it will be a steep road for Indonesian people to get laws that meet effectiveness and efficiency, or in other words called efficacy (Tyesta, 2013).

The problem is very important, because this law is the backbone of the implementation of a principled state in the rule of law. As a backbone, the Act has multiple effects when it is successful or fails to be formed. That said, because based on the concept of legislation normalized in Law Number 12 of 2011, legislation is a written regulation containing legal norms and general binding established or determined by state institutions or authorized officials through procedures stipulated in the laws and regulations. Translating the concept of legislation, the Law as one of the types of legislation, also cannot be seen as just one aspect, but also must be seen from the two aspects, namely the process and also the results (Indrati, 2007). Logically it can be stated that if the process of its formation is not in accordance with the procedure or just fulfilling the requirements so that it can be declared "appropriate", it can be ascertained if the result of the process is not appropriate or fails. From the explanation, a formulation of the problem that was solved in this study can be drawn, namely why is the Academic Script required not to affect the quality of the law produced?

2 RESEARCH METHODS

The data needed in this study mainly comes from secondary data supported by primary data. Primary data is needed to support secondary data which is the foundation of this study. Secondary data in the form of primary, secondary legal materials are obtained using the method of collecting data from literature studies or document studies. Primary data needed in this study was obtained through data collection methods sourced from the type of empirical legal research. As is known that primary data is obtained directly from the source, namely the community (Tanujaya, 2017). Primary data needed in this study was collected through interview techniques. In addition to interviews, researchers also distributed questionnaires to the community randomly. The survey was conducted using the closed question method. Observations also conducted by researchers to obtain data on the need for Academic Scripts in the process of forming the Law.

3 DISCUSSION AND RESEARCH RESULTS

3.1 Development of Academic Manuscripts in Various Regulatory Regulations concerning the Establishment of Legislation in Indonesia

The norm that requires the existence of an Academic Script in the formation of the Act is indeed stated in Law No. 12 of 2011. Previously, in the regime of Law No. 10 of 2004, there was no such statement. Historically, it can be referred to that the standard use of the term Academic Script was popularized through the Decree of the Head of the National Legal Development Agency (BPHN) Number G159.PR.09.10 of...
1994 concerning the Technical Guidelines for the Preparation of Academic Scripts in the Laws and Regulations. The first time, academic script was introduced by Muchtar Kusumaatmadja in 1974 while serving as Minister of Justice, then developed and accepted by the Department/Non-Departmental Government Institution (LPND) as a concept of thought in drafting legislation. The Academic Script was first placed as the first basic ingredient of thought in submitting permission to initiate the drafting of the Bill to the President. In terms of legal politics, the change in the provisions regarding the process of establishing the Law in Law Number 10 of 2004 concerning the Establishment of Legislation which has been revoked by Law Number 12 Year 2011 is to encourage a more rational legislation. Before Act No. 12 of 2011, Academic Scripts were simply known through Keppres No. 188 of 1998 even before. This Presidential Decree regulates the procedure for preparing a bill that requires initiatives to request approval from the President in advance regarding the drafting of the law accompanied by a full explanation of the conception of regulation which includes the background and objectives of the drafting, goals to be realized, points of view, scope or object to be arranged, and the range and direction of the arrangement.

3.2 Dynamics of Quality Act
Lon Fuller, in his book entitled Morality of Law, points out good legal principles that can be used as indicators for quality laws. The principles of good law are as follows (Fuller, 1973).

1. A legal system must contain standard rules, and may not contain or consist of ad-hoc decisions.
2. Rules that have been made must be announced so that people know these norms and can be used as guidelines for behavior.
3. There must be no retroactive rules, because it will damage the integrity of the rules intended to apply in the future.
4. A rule must be arranged in a formula that is understandable or easy to understand.
5. A legal system must not contain rules that contradict each other.
6. Rules must not contain demands that exceed what can be done.
7. There should be no habit to change rules frequently because it will cause a loss of orientation.
8. There must be a match between the rules promulgated and the day-to-day implementation or enforcement in real cases.

From the data and descriptions that have been analyzed by researchers, it can be stated that even though Law Number 10 of 2004 has opened the door to allow the compilation of Academic Manuscripts in the formulation of the Law, not all legislations in the regime are accompanied by Academic Scripts. This resulted in the percentage of the laws filed for judicial review as a percentage greater than the Law established in the regime of Law Number 12 of 2011. With the fewer number of laws submitted for judicial review to the Constitutional Court, at least the Law can be stated as fulfilling the principle of need, ensuring order to achieve justice, and can be understood. With that also, at least the objectives to be achieved can be realized through the said Act. Whereas regarding easy to access, participatory and transparent, it can be seen from the process of forming the Law which should have been started since planning. With this process it is hoped that the community can be participatory and communicative. Regarding saving costs, according to researchers when a law is not submitted for judicial review, it can be stated that it has saved costs. This is because, to compile a law according to Bappenas's data in 2012, it costs around 9 (nine) billion not yet added to the cost of preparing Academic Scripts that spend around 200 million. Not to mention, for example, it must be a judicial review, the state costs will be re-issued to test an Act. The latest data stated in the Internal Meeting discussed the National Legislation Program (Prolegnas) in the DPD RI, also stated that the total budget spent to form the Act was 9 billion rupiah. Then regarding the effectiveness, it will be superficially stated that the Law which has not been submitted for judicial review is effective, given the number of people who accept the norms of all Indonesian people, and because there is no one whose interests are harmed by the birth of a law. Academic manuscripts will greatly influence the quality of the Act, when the Academic Script is able to take into account the impact and benefits that will be incurred or the risks from the enactment of the Act. So, when the Academic Script is able to present and provide solutions through action options for the legislators, the relationship that will be produced will be significant because the Law shows its quality that meets efficacy.

3.3 Reasons That Cause Academic Manuscripts Are Not Influential To The Quality Of Acts Produced
Some of the research that has been carried out further shows the quality of legislation produced in 2004 until 2009, while for the legislation year after the enactment of Law Number 12 of 2011 there is little visible, such as research conducted by Habibie Center and the Center for Law and Policy Studies (PSHK). The reasons that cause it significantly can be known through the elaboration of the results of the research with interviews that the researchers did with the speakers. Based on the results of interviews that researchers conducted with Maria Farida Indrati, information was obtained that the cause of the Academic Manuscript was not followed by the lawmakers to form legal norms in a law can be traced during the process of discussing laws, because according to Maria Farida changes in the formulation of legal norms from what was written on the Academic Script that happened when it was discussed. The results of the PSHK study also stated that the process of law formation in the DPR was indeed full of interests, the number of political parties had strongly shown that there were diverse interests in determining legal norms in the law, and that was indeed discussed, which indeed happened in the DPR. The process of discussing the law is the process of forming a law which, according to Law Number 12 of 2011 concerning the Establishment of Legislation, occurs after the process of drafting the law is completed. The process of drafting laws occurs in the respective environment of the legislators, in this case the DPR and the President. This is actually understandable, because indeed the authority granted by the Constitution to form a law is the DPR with the joint agreement of the President. With the provisions of Article 43 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislation, in fact the DPD is also given the authority to submit a draft law, only the DPD can submit it through the DPR. The sound of this provision can also be interpreted that the Draft Law originating from the DPD is "deemed" to come from the DPR. However, after the
provisions of Article 43 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation, a judicial review by the Constitutional Court, it was decided to read or interpret that "the bill can come from the DPR, DPD or the President." It cannot be denied that there will be interests and it is almost never separated from the interests of political parties that influence the independence and objectivity of the legislators in carrying out their mission as forming legal norms in the Act that will direct and show behavior, even as the basis of the authority of actions to achieve the objectives of the country. Interest interests referred to above also occur because the politics of legislation is not clear in terms of vision and orientation. This can be seen from the development priorities and priorities of legislation that are not synergistic and even contradictory. The lack of clarity in legislative politics has opened the door to opportunities for transactions, whether in the sense of negotiating or compromising to accommodate "what interests and who" in the legal norms of the Act. Such compromises also have the potential to defeat the interests of the nation and state. According to PSHK's research, political legislation at the planning stage was dominated by elite political character. Likewise with the discussion stage, it is a stage that contains elite and technocratic characters. However, it is the elite character who holds control in the process of discussing the law. That said, because in the stages of discussion, faction groups and coalitions faced the Government to take political action in formulating legal norms in the law (Nursyamsi, 2012). In fact, according to Mahfud MD, political exchanges often occur, so that the Law created is based on the wishes of individuals, groups rather than communities. That is, again it must be stated that the interests of political parties and even individual political aspirations greatly influence the politics of legislative legislation, so that scientific arguments in the Academic Paper can be eliminated and not used in the preparation of legal norms of the Act. The draft law can also be enforced even though there is no Academic Text and there is no clear urgency or need (Mahesa, Mustofa, & Saripudin, 2013). The statement was in line with what was stated by Inosentius Samsul, Chair of the House of Representatives' Draft Law Center in an interview with researchers. According to Inosentius in the interview as follows: (Interview with Inosentius Samsul, Head of the Central Committee for the House of Representatives 'Expertise Act, Secretariat General of the House of Representatives' Expertise, Jakarta, 3 January 2018) In practice, almost no draft norms of the law found in the Academic Paper were then passed, and that changed in the discussion, because the main process in making the law took place during the first and second level discussions. Changes to the draft occur because there is a touch of politics, while in the Academic Script there is really no touch from politics. Thus, the reason why the legislators do not follow the Academic Script is the political reason that occurred in the discussion process of the Draft Law. The dynamics of discussion and method of discussion have an influence in the process of law formation, even the dynamics of decision making is very much the reason why legislators do not follow the Academic Script in the process of drafting the law. Another reason that the Academic Manuscript did not follow in drafting the law was that the time spent by the DPR in the process of discussing the law was less than the time used to carry out the oversight function. In addition to the Commission and the Special Committee, there is a Legislative Body which is also an instrument of the DPR which is expected to improve the quality and quantity of the RUU in the DPR, but according to research results, the Legislation Body becomes a bureaucratic legislative function because there is no standard mechanism in the DPR accept a draft law from outside parties funded by foreign parties or the state budget. This kind of bill needs to be criticized because the bill that was produced could have been contaminated by the parties who funded so that its neutrality needs to be questioned. As with data released by Kompas, based on data received from the State Intelligence Agency (BIN), there are "72 laws infiltrated by foreign interests", including the National Education Law, Health Law, and Electricity Law. In addition, it could be that the bill is an "order" from the DPR, so it is still accommodated even though it does not have an Academic Script (Mahesa, Mustofa, & Saripudin, 2013). Regarding this, through an in-depth interview with Raymod (Chairperson of the BPHN National Law Development Planning Center Section) it was stated that the bill that has an Academic Script should be traced from the DPR, the Government or the DPD. This was done, because for the DPR, planning for the establishment of the Act was carried out through one instrument, namely the Legislation Body. This situation will facilitate the inclusion of interests in the need for legislation. In contrast to the Government, compiled by the Proponent must then be coordinated by the Minister which must be submitted to Bappenas and the Ministry of State Secretary, Ministry of Finance and Ministry of Home Affairs. Whereas in the DPD carried out by a tool called the Planning Committee of the Law.

4 CONCLUSIONS

Academic manuscript is required but does not affect the quality of the law produced because it is caused by various factors or reasons. The quality of the Act produced by the Actors requires observation, because almost nothing becomes a benchmark to determine whether the resulting Law is declared quality or not, and remembers that the formation of the Act is part of political life. But that does not mean that the Law produced by the Actors cannot be assessed and determined by the quality of the community. Required academic manuscripts through Law No. 12 of 2011, ideally should be a "way out" for problems that exist in society, including the needs of the community as outlined in regulatory ideas as well as content material on the norms in the legislation. However, the number of judicial review submissions to the Constitutional Court is still high and there are still laws whose content material is not in accordance with the amount that is not small. Academic manuscripts have no influence on academic quality because the discussion of the Act that occurs is not only an academic problem but also a political problem, so it is difficult to dialogue or encounter academic texts with political discussions. The process of forming a law in the DPR is indeed full of interests, the number of political parties has strongly shown that there are diverse interests to determine legal norms in the law, and that is indeed seen in the discussion, which indeed happened in the DPR. Interest interests also occur because of the politics of legislation that is not clear in terms of vision and orientation. This can be seen from the development priorities and priorities of legislation that are not synergistic and even contradictory. The politics of legislation at the planning stage of the formation of the Law also dominated the elite political character. Likewise with the discussion stage, it is a stage that contains elite and technocratic characters. However, it is the elite
character who holds control in the process of discussing the law. The dynamics of discussion and method of discussion have an influence in the process of law formation, even the dynamics of decision making is very much the reason why legislators do not follow the Academic Script in the process of drafting the law. The time used by the DPR in the process of discussing the law is less than the time used to carry out the oversight function, also the reason for the non-influence of the Academic Text on the quality of the Act.

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INTERVIEW
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