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Eradicating All Rules Through Article 42 Of Law 21 Of 2023 On The National Capital: A Study Of Legal Norms And Morality

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Abstrak

Norma hukum dalam suatu aturan merupakan wajah pemerintah dalam melaksanakan suatu kebijakan, norma menjadi poin penting pada tujuan hukum itu sendiri yakni keadilan. Kerancuan norma setidaknya memiliki beberapa aspek, yaitu: norma terbuka, norma kabur, norma bertentangan dengan norma lain. Kesemua aspek tersebut merupakan satu kesatuan dalam "konflik norma". Pasal 42 Undang-Undang Nomor 21 Tahun 2023 tentang Ibu Kota Negara (IKN) menjelaskan bahwa, jika terdapat peraturan yang bertentangan dengan Undang-Undang IKN tersebut maka peraturan lain dianggap tidak berlaku. Dengan demikian, banyak dari beberapa akademisi hukum mengkritisi pasal tersebut, sebagai pasal sapu jagad. Maka dengan demikian, penelitian ini menggunakan metode penelitian normatif yang mengkaji norma-norma dan politik hukum pada Pasal 42 Undang-Undang IKN dengan menggunakan pendekatan konseptual (conceptual approach) dan pendekatan perundang-undangan (statute approach). Sehingga penelitian ini menunjukkan bahwa secara *ratio legis* tidak dapat dimungkinkan suatu undang-undang menyatakan undang-undang lain tidak berlaku, yang mana pada status kedudukannya setara sesuai termaktub di dalam Pasal 7 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

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Abstract

Legal norms in a regulation are the face of the government in implementing a policy, norms become an important point in the

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purpose of the law itself, namely justice. Norm ambiguity at least has several aspects, namely: open norms, vague norms, norms that conflict with other norms. All of these aspects are a unity in 'norm conflict'. Article 42 of Law Number 21 of 2023 on the National Capital City (IKN) explains that, if there are regulations that conflict with the IKN Law, other regulations are considered invalid. Thus, many legal academics have criticised the article as a sweeping article. Thus, this research uses a normative research method that examines the norms and politics of law in Article 42 of the IKN Law using a conceptual approach and a statutory approach. Thus, this research shows that in terms of ratio legis, it is not possible for a law to declare another law invalid, which has an equal status as stipulated in Article 7 of Law Number 12/2011 on the Formation of Legislation.

INTRODUCTION

Authoritarian governments can succeed in a democracy for period of time, wherever permitted or possible, by limiting the will of the possible, by limiting the desire of party members to voice their opinions. This will work well as long as political success can be political success can be achieved, especially by participating at the central government level. Benefits in the form of government positions and income and prestige can be bestowed on followers, even if it goes against the principles of a democracy based on the rule of law.[1] conception of the rule of law or 'Rechtsstaat' which was previously only listed in the Explanation of the 1945 Constitution, is formulated explicitly in Article 1 paragraph (3) which states, 'The State of Indonesia is a State of Law.' In the concept of the State of Law, it is idealised that what must be in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the rule of law is 'the rule of law'. principle of the rule of law is 'the rule of law, not of man'. What is called government is essentially the law as a system, not individuals who act as 'puppets' of the law. only act as 'puppets' in the scenario of the system that governs them.[2]

The issue of norms in the legal order has been discussed, more than half a century ago, in the first edition of Jurisprudence by Sir John Salmond 1902 stated that in the legal system must have the highest principles that make all principles guided by the highest which is final law, sourced based on history and not law.[3] Norm is the origin of the word norm which is defined as a guideline or basis for behaviour. Some various views of scholars expressed about this norm, be it

[1] Thomas Meyer, *Dari Partai Otoriter Ke Partai Massa* (Friedrich-Ebert-Stiftung (FES) 2012).[19]
[2] Jimly Asshiddiqie, 'Gagasan Negara Hukum Indonesia' Artikel [1].
[3] Julius Stone, 'Mystery and Mystique in the Basic Norm' (1963) 26, No 1 The Modern Law Review 84.

in the perspective of the flow of natural law, positivism, utilitarianism, to the flow of history. But in essence, regarding the characterisation of this norm, many refer to the views of Hans Kelsen. According to Kelsen, the basic norm is a necessary presumption if the law is to be understood as a norm.[4] The meaning of the basic norm is the constitution of a country, if in Indonesia refers to the 1945 Constitution and also Pancasila. When viewed based on the structure of the legal system in Indonesia, there are several levels in accordance with what Kelsen stated regarding the hierarchy of norms, that's:[5]

1. Staatsfundamentalnorm is the content of Pancasila in the Preamble of the 1945 Constitution;
2. Staatsgrundgesetz is the content of the body of the 1945 Constitution, TAP MPR / S / and also the Convention on State Administration;
3. Formell gezets are laws as the mandate of the basic norms;
4. Verordnung en autonomie sazung are the implementing regulations of the law, for example government regulations, regent regulations and so forth.

Based on the formation of laws and regulations, the functions of Pancasila include: basic norms, fundamental norms, first norms, fundamental state rules, and legal ideals.[6] So that Pancasila is the formulation and basic guidelines in running the life of the nation and state. This basic norm is a reference for every form of legislation in Indonesia, so that if a regulation is contrary to the basic norm (1945 Constitution), it can be tested both materially and formally through the Constitutional Court. Constitutional review by judicial bodies has characterised many legal systems since the decision taken by the United States Supreme Court in the case of Marbury v. Madison in 1803.[7] It was from this case that the constitutionality of a piece of legislation was recognised by the judiciary. In the United States system of government, there are five branches: house, senate, president, court, and independent agencies such as the federal reserve board.[8] So that norms are closely related to morals, specifically regarding morals in the formation of

[4] Henry Cohen, 'Notes on Hans Kelsen's Pure Theory of Law' (1981) 26 Catholic Lawyer. [148].
[5] Jimly Asshiddiqie, *Teori Hierarki Norma Hukum* (Konpress 2023). [38]
[6] Marwan Mas, *Hukum Acara Mahkamah Konstitusi* (Ghalia Indonesia 2017). [16]
[7] Maurice Adams &Gerhard van de Schyff, 'Constitutional Review by the Judiciary in the Netherlands' (2006) 66 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht Heidelberg Journal of International Law (HJIL) 399.
[8] Bruce Ackerman, *The New Separation of Powers* (Harvard Law Review 2000).

legislation explained by Lon L. Fuller in his book entitled 'the Morality of Law', there are eight things that need to be considered according to Fuller, that's:[9]

a. Principles should be clearly outlined so that they can be applied generally, so that an ad hoc and unpatterned legal system will not provide the expected 'internal morality' that legal principles should have;
b. the mandate of laws should be conveyed to the people to whom they are directed;
c. newly promulgated legal principles, except in rare circumstances should be applied only prospectively and should avoid retroactive principles;
d. the standard of action and slowness of the legislator should be clearly stated. Fuller argues that not all laws prescribe the same in every case and this should be clarified;
e. the formation of laws must be consistent;
f. emphasising that the law is bound to human capabilities, meaning that setting norms on regulations that impose an impossible action violates the internal morality of the law;
g. the enactment of laws and regulations that are contrary to morals;
h. too frequent amendment of a regulation and failure of adjustment between the above regulation and the implementing regulation.

Article by article in Indonesian laws and regulations reflect the norms and morals aimed at lawmakers in producing legislative products. Based on several laws issued by the current authorities, they do not reflect the meaning of a 'moral law', for example in Law Number 6 of 2023 concerning Job Creation and implementing regulations regarding minimum wages, namely Government Regulation Number 51 of 2023 concerning Wages, where these regulations exclude the obligation for micro and small entrepreneurs to pay minimum wages. If reviewed based on Article 35 paragraph (3) jo Article 35 paragraph (5) of Government Regulation Number 7 of 2021, it explains that micro and small entrepreneurs both capital and sales in the amount of billions of rupiah. This is far from reasonable in the meaning of 'micro and small'.

Recently, the government has been very guided by the theory of the economic approach to law put forward by Richard A. Posner in his book entitled 'Economic Analysis of Law' which states that the law is a demand for economists or entrepreneurs.[10] So it is not surprising that

[9] Edwin W. Tucker, 'The Morality of Law, by Lon L. Fuller' (1965). 40. Article Indiana Law Journal . [274].
[10] Gary Minda, 'The Lawyer - Economist at Chicago: Richard A. Posner and the Economic Analysis of Law' (1978) 39 OHIO State Law Journal, [454].

government policies in recent years have favoured foreign investors, one example is the ease of licensing, the period of use of land rights, be it HGU, HGB and so on, and also the minimum wage which is increasingly meaningless to a living wage. In the legal and economic approach, legal liability for damages must be paid at the price of the harmful behaviour.[11] Although liability rules do not prohibit certain actions, they convey that some actions are not right, such as certain circumstances, which can influence behaviour by themselves, a moral persuasion or normative effect.[12] In essence, legal responsibility can also influence expectations about how others will behave, which in turn influences behaviour when preferences are about others.[13]

Thus, if you highlight the contrast of Article 42 paragraph (1) of Law Number 21 of 2023 concerning the National Capital, which states that: By the time this Act comes into force, in terms of preparation, construction, and relocation of the National Capital City, as well as the administration of the Government of the Special Capital Region of the Archipelago:

a. all provisions of laws and regulations that conflict with the policy of implementation of preparation, development, and relocation of the State Capital and implementation of the Special Regional Government Capital City of the Archipelago; and
b. laws and regulations governing about regional government.

shall be declared invalid.

The norms in the article are very contradictory to other norms, including basic norms and principles contained in other laws and regulations. So the limitation of legal discovery in this case is blurred norms, open norms or conflicting norms, all of which are called norm conflicts. So from this problem it is necessary to provide solutions to the resolution of norm conflicts.[14] A law that is not normative is one that does not fulfil the standards of a law that should contain norms, including: a principle is not a norm, laws must contain norms and not principles, and principles must be formulated into norms.[15] According to Gustav Radbruch, law comes from justice as if it were born from its mother's womb so that justice existed before the law.[16]

[11] Bruno Deffains, 'Law and Norms: Experimental Evidence With Liability Rules', (2019) Volume 60 International Review of Law and Economics [2].
[12] ibid.
[13] ibid.
[14] Philipus M. Hadjon & Tatiek Sri Djatmiati, *Argumentasi Hukum* (Gadjah Mada University Press 2017). [31]
[15] Philipus M Hadjon, *Hukum Administrasi Dan Good Governance* (Universitas Trisakti, Jakarta 2010). [19]
[16] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Prenada Media 2009).[121]

The study of Article 42 of the IKN Law is very broad in its object regarding conflict of norms and also norms on principles. The above provision states the invalidity of the conflicting law in the IKN Law, which in reality is the equal position of a law. This means that it is impossible for a law to cancel the validity of another law. It is different with the principle of legal preference as a rechtsvinding solution that shows the validity of one norm and does not mean that other norms are contradictory, but a feasibility to be applied. For example, Article 310 paragraph (1) of the Criminal Code regulates defamation, but is also specifically regulated in Article 27 paragraph (3) of Law Number 19 Year 2016 on Electronic Information and Transactions. If we talk about examples of norm conflicts, for example in administrative law we recognise the terms positive fictitious and negative fictitious, the norm in Article 53 paragraph (3) of Law Number 30 of 2014 concerning Government Administration which explains that if the official/government body does not determine the application, it is considered to grant the application. In contrast to Article 3 paragraph (2) of Law Number 5 of 1986 concerning State Administrative Courts which explains that if the body/official does not issue a determination of the application, it is considered to reject it.

Legal certainty as one of the methods to achieve legal objectives becomes important when reviewed based on Article 42 of the IKN Law. The politics of law that occurs is that the Government tries to do everything possible to accelerate the construction of the new State Capital, even though it is contrary to the norms that are based on moral principles. That way, this paper uses a method of interpretation based on grammatical or language interpretation. This is important because of the social function of the law.[17]

METHOD

Legal science is a sui generis science, which means that legal science is a separate science so that it has distinctive characteristics in its research object. This legal research is certainly normative research that examines existing legal norms, with the aim of finding the truth of coherence. This research uses methods:

[17] Colin S Diver, 'Statutory Interpretation in the Administrative State' (1985). 133. University of Pennsylvania Law Review. [150].

1. statutory approach (statute approach) that this research establishes a lex specialis and lex generalis position.[18]
2. conceptual approach (conceptual approach) that this research does not rely on existing rules, it is also done because there is no or may not be legislation on the problem at hand.[19]

According to Dworkin, legal research is a study to investigate the relationship between a set of doctrines and other doctrines, to see the order made in the world of precedents (common law) with an isolated status.[20]

DISCUSSION AND ANALYSIS

1. Conflict of Norms Article 42 (1) of Law 21 of 2023

Legislation is part of the national legal system which plays a very important role in the development of national law to realise a national legal system based on Pancasila and the 1945 Constitution and to meet the needs of the community for good legislation, it is necessary to make regulations regarding the formation of laws and regulations which are implemented in a definite, standardised and standardised manner and method that binds all institutions authorised to form laws and regulations. The existence of the formation of a law is to become the basis for every citizen, especially government officials, in determining a policy. In its foundation, to complete a provision in the formation and enactment of a law, it must be understood the function of the formation of laws and regulations. The functions of the formation of laws and regulations include;[21]

1. As an effective statement of policy.
2. Law as an important step for the state in efforts to change behaviour .

Apart from the functions contained in the formation of a statutory regulation so that there is no conflict of norms in the future, it must pay attention to the stages in its formation. These stages are sociological, political and juridical.

In the preparation of laws and regulations, there is a close relationship between values, principles or principles and norms. Values have a role in shaping principles and then principles

[18] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, Jakarta 2005). [140-141].
[19] ibid. [170].
[20] Ronald Dworkin, 'Legal Research' (1973) 102 the MIT Press on behalf of American Academy of Art & Sciences [53].
[21] Ahmad Redi, *Hukum Pembentukan Perundang-Undangan* (Sinar Grafika 2018).[21].

will give birth to norms. Substantial principles or principles are the pedestal or foundation which will be the starting point of thinking and will be used as guidelines in the formulation of material for a statutory regulation. The legal principle is not a concrete legal method, but is a concrete regulatory background and is also general or abstract. Indeed, in general, legal principles are not set out in the form of concrete regulations or in articles.[22] Norm conflicts often occur in positive legal systems because the substance of law is complex and dynamic. It is complex because the substance of law covers a wide scope of regulation concerning all aspects of state life. It is dynamic because the substance of law is required to always be able to adjust to the development of the legal needs of the community. Conflict of norms can occur between lower regulations and higher regulations (vertical), between equal regulations (horizontal), or even between norms in one regulatory instrument itself (internal). For this reason, conflict of norms in the formation of a regulation is a conflict that often occurs in the system of regulation formation by the government.[23]

A normative system is a set of norms that has two main practical functions: *first,* to evaluate human actions and *second,* to guide people's behaviour. Guidance and evaluation based on normative systems can be good or bad. So ethics must be a discipline that provides criteria for assessing normative goodness and flaw. So it can be said that the normative characteristics are: derived from ethical considerations, logic, and more specific normative logic.[24] Pancasila and the 1945 Constitution are State Constitutions that not only contain the highest norms, but also contain basic patterns of constitutional reference for citizens in life.[25] According to Roscoe Pound, morals and morality are two different things when referred to the meaning of a norm, but 'morals' refers to a broad field of behaviour and is evaluated based on goals, ends, and results. Whereas 'morality' refers to a set of behaviours based on accepted standards.[26] So if it is associated with Article 42 of the IKN Law, it can be interpreted as not having standards to be accepted in the aspect of the legal framework which is found in normative conflict.

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[22] Meta Suriyani, 'Pertentangan Asas Perundang-Undangan Dalam Pengaturan Larangan Mobilisasi Anak Pada Kampanye Pemilu' (2016) . 13. Jurnal Konstitusi. [672-673].

[23] Andi Syahrial Fauzar, 'Analisis Terhadap Konflik Norma Pasal 9 Huruf G Peraturan Presiden Nomor 12 Tahun 2021 Dengan Lampiran Bab I Huruf E Penggunaan Anggaran Nomor 8 Peraturan Menteri Dalam Negeri Nomor 77 Tahun 2020' (2022) 6 Jurnal Hukum Dan Kenotariatan. [1251].

[24] Carlos E Alchourrón, 'Conflicts of Norms and the Revision of Normative Systems' (1991) 10 Law and Philosophy. [413].

[25] HM Laica Marzuki, 'Kesadaran Berkonstitusi Dalam Kaitan Konstitusionalisme' (2009) 6 Jurnal Konstitusi. [19].

[26] Roscoe Pound, 'Law and Morals-Jurisprudence and Ethics' (1945) 23 North Carolina Law Review. [185].

In the aspect of administrative law, it is known as the principle of good governance which is an important part of governance by guiding mechanisms and methods to realise issues such as participation and transparency by prioritising democratic procedures in the decision-making process.[27] It is clearly stated regarding the General Principles of Good Government or abbreviated as AUPB, in Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, that:

1. Legal certainty;
2. Benefit;
3. Impartiality;
4. Accuracy;
5. Not abusing authority;
6. Openness;
7. Public interest; and
8. Good service.

The real legal certainty is that justice will be served as there is no point in stating that some branches of technical law (for example: procedural law) the sole purpose of justice is to ensure legal certainty.[28]

Formally, as an important procedure in the formation of laws and regulations, at least 3 elements are fulfilled, namely: the right to be heard, the right to be considered, and the right to be explained. Because these three points are very important in terms of public participation to determine the direction and purpose of a law. Therefore, all citizens as human beings must have the same position before the law, this means that the State in the formation of laws and regulations should not consider differences in capacity, physical and moral, and social functions. Instead, the state should consider relevant differences.[29] The similarity in this context is that public signalling is an unobtrusive part, as its determination on academic standards is also in the context of higher authorities for example, courts are bound to use evidentiary standards.[30] For example, the IKN

[27] Onur Kaplan, 'Good Governance, Right and State: Quo Vadis Administrative Law?' (2022) 5 Uluslararası Yönetim. [623].

[28] Paul Heinrich Neuhaus, 'Legal Certainty Versus Equity in the Conflict of Law' (1963) 28 Duke University School of Law. [796].

[29] Ben Mitchell, 'Process Equality, Substantive Equality and Recognising Disadvantage in Constitutional Equality Law' (2015) 53 Irish Jurist. [36-37].

[30] Claude Fluet &Murat C Mungan, 'Laws and Norms With (Un) Observable Actions' (2022) 145 European Economic Review. [2].

Law is aimed at investor benefits and accelerating the development of IKN. So as the authority of the Constitutional Court is to test the material and formal of a law that is contrary to the basic norms or the 1945 Constitution. In terms of material, it means that the things that are questioned are seen from the material content of the law which should not be contrary to the 1945 Constitution, on the other hand, if the formal test means that what is questioned is the aspect of form, format, and formulation as well as the process of forming the law that does not bind the constitutional procedures that should be followed.[31] The assessment of this testing procedure, then, can be given the following criteria:[32]

a. Assessing the constitutionality of a law in terms of its formality (formale toetsing);
b. The law is enacted in the appropriate form;
c. The appropriate institution; and
d. The appropriate procedure.

The current presumption regarding Article 42 of the IKN Law is procedurally and materially flawed, but if it is related to a piece of legislation that is indeed contrary to the basic norms, being tested at the Constitutional Court is a solution. If the assumption is correct, then the Constitutional Court is the solution to a law, and it can be equated that a hospital can cure all diseases. It is wrong, then, if the government issues regulations that are damaged and many diseases arise and the government through its spokesperson says to test in the Constitutional Court. This is indeed very immoral and far from being a good norm as a guiding standard for one of the lawmaking power holders. There is a suspicion that the government is committing arbitrary action, which occurs when it does not use all the considerations that guide the use of authority.[33] Why is Article 42 of the IKN Law ambiguous in its norm? If you look at the origin in the formation of a norm, it actually exists in time and space, and thus is the result of certain causes, according to the law of causality. According to Kelsen, this norm is the meaning of a fact that often occurs so that its existence is its validity.[34] Thus, norms that are deemed objectively valid serve as value standards that are applied to actual behaviour.[35] The most important part of a legislation that contains norms, the norms should be discussed in detail that presents the principle of the usefulness of the norms, the dynamic

[31] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Sinar Grafika 2010) [41].
[32] ibid.
[33] A'an Efendy &Freddy Poernomo, *Hukum Administrasi (Cetakan Ke-2)* (Sinar Grafika 2019). [132].
[34] Hans Kelsen, 'On the Basic Norm' (1959) 47 California Law Review. [107].
[35] Hans Kelsen &Max Knight, 'Norm and Value' (1966) 54 California Law Review. [1624].

nature of the norms and the adaptability to overcome problems with the basic principle of common interests, so that an alternative regulation (acceleration of IKN development through the IKN Law) should only explain flexible and agile compared to other formal laws.[36]

2. Legislative Products Reflect the Government

The prohibition on treating norms as a package that is somehow promoted, and eventually sold to an international audience.Many important norm attributes of appropriateness, relevance, level of support, and drafting are endogenous to the norm definition process. Thus, legislators who enact bad norms are a reflection of the actors who enact them.[37] Some legal writers, recognise the fact that not all norms manage to reach the final stage of widespread acceptance, while other norms show competing and often conflicting norms and disrupt the cyclical process of state life.[38] As in the aspect of legal norms that are not just unilaterally binding but give the right to others to demand the fulfilment of these norms, namely:[39]

1. imperative;
2. imperative-attributive.

Naturally, for example, Article 42 of the IKN Law raises the question, is this reference rule moral or legal? This question can only be answered by reiterating the new principles needed to decide whether it is unilateral or bilateral, namely the relationship with legitimate claims or not. Thus, the state today finds itself in a regression that leads either to infinity or to a vague point of adherence to rules that conflict with each other. So there is no longer a high rule (basic norm) to refer to and as citizens will not be able to apply the distinction between moral and legal rules. Some things that need to be considered in this norm conflict, are:[40]

a. that normative conflict is generated by some kind of normative inconsistency (conditional inconsistency i.e. inconsistency with respect to certain facts); and
b. that the only way to resolve normative conflict is to revise the normative system that gave rise to the conflict.

[36] Louk Faesen, 'The Theoretical Underpinnings of Norm Development' (2020).
[37] Jennifer Hadden &Lucia A Seybert, 'What's in a Norm? Mapping the Norm Definition Process in the Debate on Sustainable Development' (2016) 22 Global Governance. [254].
[38] ibid, [154].
[39] Maria Ossowska, 'Moral and Legal Norms' (1960) 5 the Journal of Philosophy. [251].
[40] Alchourrón (n 24).[414].

If the Government has lately been guided by the economic approach to law, then the economic literature distinguishes moral from legal rules in that laws can influence the strength of norm enforcement, but norms are enforced by means other than sanctions.[41] Simply put, morality has its own characteristics, that the law is always subject to moral judgement, and moral reasoning trumps legal reasoning. Thus the relationship between law and morality is in a normative sense. Law and morality, for example, relate to practical reasoning, namely reasoning about what to do, what goals to achieve, and what the law wants to be. In this sense, both law and morality are about right and wrong, good and bad, virtue and vice.[42] What then is the concept of the rule of law? Achieving the rule of law is not a mere lip service to the ideals of a prosperous and secure modern democracy, it means extending the rule of law to people who are not necessarily familiar with it and it also means extending the rule of law to the dark corners of government.[43] Government based on clear and definite legal norms, norms whose meaning is not so vague or debatable as to leave those subject to them at the mercy of official discretion. These are the formal aspects of the Rule of Law, as they concern the form of norms applied to behaviour so that generality, prospectivity, stability, publicity, clarity, and so on. But the State does not value them only for formalistic reasons. In F. A. Hayek's theory of the rule of law, that values these features because of the contribution of citizens to predictability, which Hayek argues is indispensable for freedom. In Lon Fuller's theory that valuing the citizen is due to respect for human dignity 'To judge the actions of society by unpublished or retroactive legislation, is to convey to society the indifference of the State to the power of (citizen) self-determination.'[44]

Perhaps sometimes this is meant to suggest that people who are given the role of making laws should be subject to the laws they make. But this is a very gross generalisation. Whether lawmakers should be subject to the particular laws they make depends on the type of laws they make. There is nothing wrong, for example, if a parliamentary law stipulates that no other institution can change a law passed by parliament; by definition, this law applies to all institutions except the legislature that passed it. Furthermore, even if the legislator excludes himself, as a

[41] Richard H McAdams, 'The Origin, Development, and Regulation of Norms' (1997) 96 The Michigan Law Review Association. [350].

[42] Peter Cane, 'Morality, Law And Conflicting Reasons For Action' (2012) 71 The Cambridge Law Journal. [60].

[43] Jeremy Waldron, 'The Rule of Law and The Importance of Procedure' (2011) 50 Nomos. [4].

[44] ibid.

person from the law made in his public role, we can only say that the law is a bad law, unless it was made for a very good reason.[45]

The rule of law has moral value that is conditionally non-instrumental as well as instrumental, so long as the legal system is used to achieve morally valuable ends. The rule of law is conditionally non-instrumentally valuable by virtue of the way in which the legal system structures political relations, and the rule of law is valuable because in practice it limits the kinds of injustices that governments perpetrate.[46] Based on the rules that develop from the judicial process, the law is actually built on society. If we refer to the conception that society is fairly homogeneous, and certain values will develop automatically and without anyone intending or directing their development, then in such a society it is assumed that the rule of law developed and enforced by the courts will reflect the prevailing values.[47]

Using Austin's positivist view, what exists and what should exist are inseparable. According to Hart, the historical facts of the development of legal systems are strongly influenced by moral opinions, and moral standards are influenced by law so that the content of many legal systems cannot be denied.[48] Here are some of the principles espoused by positivism, that's:[49]

1) Separation thesis: that there is no necessary connection between law and morals;
2) Command law theory: that law is an expression of human will. According to Bentham, a law must be reducible to verbal form.
3) Sourced thesis: every valid legal norm is promulgated by the sovereignty of the legal system and the authority of the norm can be traced to that sovereignty. According to Bentham, the authenticity of a law is a question that is outside, and does not depend on the content of the law.

The current government, in forming laws and regulations, is often positivist in nature. Positivism clearly holds that jurists can ignore any consideration of what the law should be.[50] It is natural to separate norms and morals from legislation, so that according to positivism, "every law is an identifiable command of human sovereignty and that law can be made into a closed code. The law

[45] Andrei Marmor, 'The Rule of Law and Its Limits' (2004) 23 Law and Philosophy. [2-3].
[46] Colleen Murphy, 'Lon Fuller and the Moral Value of the Rule of Law' (2005) 24 Law and Philosophy . [239].
[47] Lon L. Fuller & Kenneth I. Winston, 'The Forms and Limits of Adjudication' (1978) 92 Harvard Law Review [378].
[48] H. L. A. Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review. [598].
[49] Anthony J. Sebok, 'Misunderstanding Positivism' (1995) 93 Michigan Law Review. [2063-2064].
[50] ibid. [2067].

is thus a closed system."[51] In essence, legal positivism is the belief that whatever the legislator decrees is law, nothing more and nothing less; one cannot ignore the legislator's command to question its reasonableness, because the legislator has a will that one expresses that is itself law. As Mortimer Adler put it, "the very meaning of legal positivism is that it involves the notion of arbitrariness, of an institution willing to do something that is contrary to what is natural and that is the attitude of the intellect."[52]

If we go back to the framework of Article 42 of the IKN Law, the government is indeed trying to make something that is desired by positivism. Indeed, legal positivism is very much against natural law, where positivists assume that there is no other law other than positive law.[53] It is a threat if the government establishes a rule that contains absolutely controversial matters among the people, but it becomes a guideline because it is a law. In the concept of ius quia iussum, the validity of positive law depends on its substantial conformity with the supreme law, which is an expression of the absolute values of justice. In the theory of natural law, "the true law is only the just law, regardless of the prevailing reality."[54] In essence, the law is a means to achieve certain absolute moral values that can be found through reason and the law is closely related to morals.[55]

CONCLUSIONS

It is inevitable that the Government of the day forms laws that are irrelevant and contradictory to other laws. Many examples of regulations that have recently been very far said to be moral, such as the omnibus law on job creation, Law No. 30 of 2014 with Law 51 of 2009, and Law 21 of 2023 with other regulations. The laws studied through the norms above are a form of eradication of legal morals in the world of legislative formation practices. This is a form of political and economic configuration. Therefore, currently the law has been influenced by economic and political factors that cannot be avoided by the lawmaking elite.

[51] ibid. [2069].

[52] Mark R. MacGuigan, 'Law, Morals, and Positivisme' (1961) 14 The University of Toronto Law Journal. [1-2].

[53] Giorgio Pino, 'The Place of Legal Positivism in Contemporary Constitutional States' (1999) 18 Law and Philosophy. [515].

[54] ibid.

[55] Yaniv Roznai, 'The Theory and Practice of Supra-Constitutional Limits on Constitutional Amendments' (2013) 62 The International and Comparative Law Quarterly 261.

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