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PUBLIC POLICY STUDIES : REVEAL POLICY OVERLAP IN INDONESIA NOWADAYS

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ABSTRACT

This research is very important as a response to public anxiety about the policy overlap in Indonesia. In this context, some facts can be found which show that the current policy framework in Indonesia has not been able to build harmony between development needs and legislative planning. This has an impact on the policies that exist at the central level are often not aligned with the policies at the regional level. By using a qualitative approach and case study method for a particular phenomenon, this research seeks to reveal the perspective of public policy studies on the phenomenon of overlapping policies in Indonesia.

The result of this research shows that to resolve the policy overlap in Indonesia nowadays acceleration of legislation or omnibus law needs to be done so that the policies taken reflect the efficiency, comprehensive and accurate so that they will be able to create a *good governance*

INTRODUCTION

In the era of information disclosure to the public as it is now an opportunity for the government to determine an appropriate policy in overcoming various problems in each field. Because this information disclosure can quickly show people's satisfaction, so there is a need for the government's seriousness in implementing policies (Kresnamurti *et al.*, 2020). Furthermore, the system of separation of powers imposed in Indonesia is the main key in shaping an appropriate public policy. This can support the existence of a process of checks and balances among the power holders to ensure the creation of a formation as well as the implementation of policies that can lead to welfare for the people - especially in the economic field.

The phenomenon that has occurred recently revealed an overlapping policy. One of these is the overlapping policies in overcoming the Covid-19 pandemic in Indonesia - where the formulation of policies is considered confusing and there is no coherence with each other.

For example Minister of Transportation Regulation No. 25 of 2020 concerning Transportation Control During the Eid Mubarak 1441 H in order of Preventing the Corona Virus Spread is an instrument of prohibition of going hometown but makes people confused (allowed or not to go hometown) because of the inconsistency of ministerial policies related to the revision in order of transportation easing during the *Pembatasan Sosial Berskala Besar* (PSBB).

In fact, these policies should be able to tighten transportation mobility to reduce spread of corona virus. Even in various regions, including West Java through West Java Governor Regulation number 27 of 2020 concerning Guidelines for *PSBB* in handling corona virus disease 2019 (Covid-19) simultaneously tightening the technical implementation of the PSBB since May 6, 2020.

This has made people confused as revealed by the Director of the Center for Media and Democracy LP3ES, Wijayanto, in an online discussion on May 9, 2020. (dilansir pada laman detiknews.com. Tersedia: <https://news.detik.com/berita/d-5008702/lp3es-pemerintah-mencla-mencle-soal-mudik-terlalu-banyak-aktor-bicara>) that there are at least 11 statements from 7 government officials that indicate lack of consistency or inconsistency with regard to whether or not a policy can go home. This shows that the continuity between policies at the central and regional levels has not yet been created.

Understanding of situation, the birth of decentralization which gave the local government the flexibility that was intended to facilitate the acceleration of development in fact was still not well implemented. This is caused by the lack of conformity between policies that are enforced at the regional level and policies determined by the central government. The State Administration Institute in 2016 revealed that the current policy framework in Indonesia has not been able to establish harmony between development needs and legislative planning. As a result, policies at the central level are often not aligned with policies that apply at the regional level (Sumber: Lembaga Administrasi Negara [online]: Tersedia: <http://lan.go.id/id/2016-01-05-13-26-55/berita/kebijakan-pemerintah-di-semua-tingkatan-sering-tidak-selaras-dengan-kebutuhan-pembangunan>. diakses pada tanggal 10 Mei, 2020).

The above facts are reinforced by a research result which reveals the fact that Indonesia has a lot of regulations reaching approximately 42,000, which includes laws, government regulations, presidential regulations, ministerial regulations to the regulations of governors, mayors and regents in the regions, and not a few of them contradict each other.

(Donald and Toruan, 2017). When referring to the regulatory hierarchy in Indonesia, the elements of government should complement each other. But the fact is that there are still many overlapping policies.

Based on the foregoing, in the perspective of public policy studies such circumstances do not indicate the principle of good governance that should be reflected in every decision taken.

Because this does not reflect one of the principles of good governance, namely accountability which is a parameter of the success of the government in making and implementing a policy (Busroh, 2017). Therefore in this research, it will be explained in relation to the importance of public policy studies to explore the issue of overlapping policies that occur in Indonesia.

METHOD

This research uses a qualitative approach with case study method (Creswell, 2015). That is because this research seeks to study the uniqueness of certain phenomena or is limited to one research unit, namely the use of public policy studies on the phenomenon of overlapping policies in Indonesia. Data was collected through literature studies, field surveys and documentation which were then analyzed using the Milles and Huberman Models, consisting of data reduction, data display, and data verification (Miles, 1994). The data obtained during conducting the research are then presented in the form of data triangulation and an in-depth and comprehensive analysis using theories and previous research findings related to this research.

RESULT AND DISCUSSION

Basic Concepts of Policy Harmonization in Indonesia

The reform movement in Indonesia also contributed to the change in governance in Indonesia. One of the changes that occurred at that time was marked by the birth of regional autonomy. Although regional autonomy was born in the past, but it is at this moment that regional autonomy was born as widely as possible. In this context the region is given the authority to administer and regulate all government affairs outside those which become government affairs as regulated in Law Number 9 Year 2015 concerning Second Amendment to Law Number 23 Year 2014 concerning Regional Government. Even the enactment of these laws regions have the authority to make policies in providing services, increasing the participation of initiatives and community empowerment aimed at improving people's welfare. Therefore, with this regional autonomy there is no other push for each region to be able to implement accelerated development in their respective areas in accordance with the needs of the region.

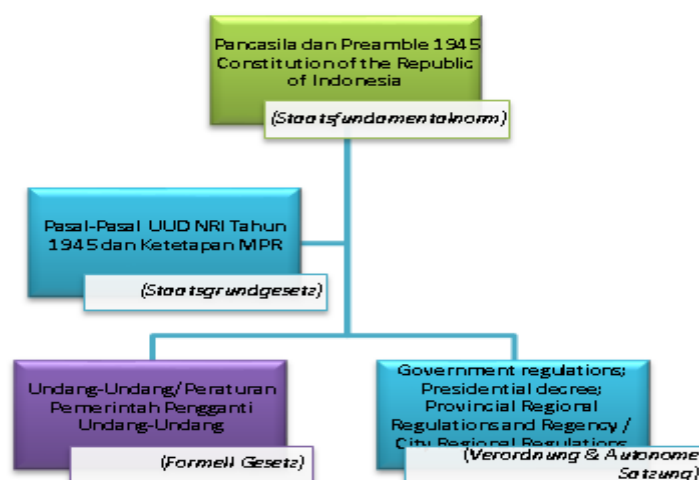
Furthermore, regional autonomy also gave birth to new dynamics in the implementation of the prevailing legal system in Indonesia. The challenge lies in adjusting regional needs with demands from the center, one of which is in making a policy. Because, with the implementation of regional autonomy has

given consequences in the form of broad authority for the region to determine the direction of policy in the region. But on the other hand, the policies made must also be in accordance with the existing policies at the center. Herein lies the challenges faced by Indonesia in producing a complete policy in order to accelerate development in various sectors in a comprehensive and accurate manner.

In the Stufentheorie theory developed by Hans Nawiasky explained about the order or hierarchy of legislation in a country (Fitryantica, 2019). In the theory explained that the legal norms of a country are tiered and stratified, where the norms below apply and are based on higher norms, and higher norms are based on the highest norms called basic norms. (Asshiddiqie, 2006).

1. Group I :Ground Norm /Basic Norm /State Fundamental (*Staatsfundamentalnorm*)
2. Group II : State Rules (*Staatsgrundgesetz*)
3. Group III : Formal Law (*Formell Gesetz*)
4. Group IV : Implementing rules /Otonomus rules (*Verordnung & Autonome Satzung*)

If it is translated into *tata urutan peraturan perundang-undangan* in Indonesia, then it can be explained that the basic norm / fundamental state is the highest norm in a country, which in this case is *Pancasila* and Preamble 1945 Constitution of the Republic of Indonesia. Furthermore, the basic rules or principal of the state are legal norms which are below the fundamental norms of the state which are basic and contain general rules which are still outline, namely the articles contained in 1945 Constitution of the Republic Indonesia. Then the legal norms of formal law are norms that are concrete and detailed and can be directly applied in society. The last group of norms is the implementing regulations that originate from the authority of the delegation, while the autonomous regulations are from the attribution authority. Then based on the description can be explained through the picture below.



Picture 1. Tata Urutan Peraturan Perundang-Undangan di Indonesia (diadopsi dari Teori

Stufentheorie yang dikembangkan oleh Hans Nawiasky (dalam Asshiddiqie, 2006))

Based on the description above, the theory specifically explains the harmonization between levels of regulations based on the basic norms or fundamental of the state (*Staatsfundamentalnorm*). Because substantially these basic norms represent the ideals of the state which lead to the welfare of the people. In other words, the legislation system created by each other must be continuous between each level. In order not to cause conflicts and overlaps in the implementation, it is necessary for the involvement of various related parties to both give attention and input both formally and materially. So, the legislation system created can fulfill the sense of justice for the community. This matter is very important because the estuary of the legislation system itself is justice for all Indonesian people which is substantially reflected in Pancasila as a fundamental *staatsfundamentalnorm*.

Polemic of Overlapping Policies in Indonesia

Tata urutan peraturan perundang-undangan system in Indonesia as illustrated by the Stufentheorie theory developed by Hans Nawiasky is actually ideal for application in Indonesia. One of the considerations given in this research perspective lies in the complexity of the problem and the diversity of needs that exist in Indonesia. With the hierarchy of regulations being applied it is expected to be able to regulate in detail one of the major problems that are elaborated through technical regulations to reach different uniqueness between regions. As a study (Bestari, Sinaga and Roespinoedji, 2019) revealed that in criticizing the implementation of public policy it is necessary to carry out an in-depth public policy analysis process that involves systematic stages so that the main issues can be effectively resolved through public policy.

But, in the implementation of the regulatory system in Indonesia at this time can not be implemented properly. Many polemic raised in the implementation. Firstly, the polemic that arose in the implementation of legislation in Indonesia can be seen from the many regulations from the central government to the regions. However, the number of these laws and regulations is not directly proportional to the acceleration of development. A research result that reveals the fact that Indonesia has a lot of regulations to reach approximately 42,000, which includes laws, government regulations, presidential regulations, ministerial regulations to the regulations of governors, mayors and regents in the regions (Donald and Toruan, 2017). However, of the many regulations in fact have not been able to be implemented effectively. Not to mention, draft regulations that have not yet been ratified have drawn various criticisms.

For example, RUU KUHP, RUU Cipta Kerja, ect. This confirms that many regulations have not been able to find coherence with the needs on the ground. It cannot be denied that this is inseparable from the interests of a handful of groups that are inserted into the regulation so that it does not reach the people's needs.

Next, polemic that arises in the implementation of laws and regulations in Indonesia is the clash between policies at every level. This can be felt once when facing the current Covid-19 pandemic.

Policies taken by the government are considered inconsistent. In other countries, the policies taken are in the form of a lockdown that is taken decisively and quickly and is carried out thoroughly. While in Indonesia, the policies adopted are in the form of social restrictions implemented in various regions while continuing to carry out strategic activities of the state based on social restrictions policies. In addition to the low level of awareness of the people of Indonesia, the policies adopted seem confusing. This can especially be seen in the prohibition of going home policy for the community. Ministry of Transportation through *Permenhub Nomor 25 Tahun 2020* about Transportation Control During the Eid Mubarak 1441 H in order of Preventing the Corona Virus Spread circular letter from the minister of economics provides leeway for the mode of transportation to return to operation (Sumber Kompas tanggal 08 Mei 2020, yang diakses pada tanggal 10 Mei 2020. Tersedia: <https://nasional.kompas.com/read/2020/05/08/12555981/ketua-mpr-kebijakan-pemerintah-operasikan-kembali-transportasi-umum>). The policy adopted by the Ministry of Transportation is considered confusing, because in various regions large-scale social restraint efforts facing the Eid al-Fitr holiday were tightened strictly. From this phenomenon, it is clear that the policies implemented during the co-19 pandemic did not form a comprehensive and accurate policy framework in an effort to overcome the spread of the covid-19 virus. The cause between economic and health relations policies seems to carry out their respective roles and seems to be in the opposite direction.

The third polemic in the implementation of legislation in Indonesia has not been able to provide efficiency with technical regulations in the field. One of them is caused by many but inefficient regulations. This phenomenon is in line with the results of the study (Adebayo, 2020) which reveals that there are no concrete policies that reflect forest protection measures in Nigeria; or research results (Roza and Angelia, 2018) which explores the importance of efficient policies in handling hospital services. In Indonesia itself, one of which can be seen in the online tax collection system implemented in Indonesia. Research result (Bestari, 2016) shows that there are still many people who are still confused in understanding the mechanism of online tax payments. The research explained that the online tax system policy still needs to be improved especially in the technical implementation arrangements. So it is expected that tax absorption can increase accompanied by a fairly high public understanding. This is what drives the need for a public policy study to the community through the public policy learning process (Bestari, Sinaga and Saudi, 2019).

Based on the description above, it can be concluded that the regulatory system in Indonesia needs to be simplified by continuing to run the existing legislation system. This is done to minimize the overlapping of too many policies, and to

be implemented efficiently in the implementation phase. Because as an effort to create a comprehensive policy Omnibus law

(Manan and Harijanti, 2017) is a legal product concept that functions to consolidate various themes, materials, subjects and regulations in each different sector to become one large and holistic legal product. That means kebijakan there will be no overlapping of policies because of the many types of legislation. However, another challenge is the need for a shared vision among the stakeholders involved so that deviations do not occur in the preparation and implementation.

Public Policy Studies on the Importance of Policy Harmonization

Based on above, then the main part in this research is the need for an approach that allows for the creation of harmonization of policies that are able to suppress the large number of regulations in a policy in order to avoid conflicts between these policies which are expected to be able to build efficiency in its implementation. In order to be effective it needs to be tightened in efforts to harmonize both vertically with higher regulations and horizontally with equivalent rules (Fitryantica, 2019). This is also needed to avoid any conflict of interest that might arise in the implementation.

In the study of public policies, to overcome the polemic of overlapping public policies, it is necessary to accelerate the preparation of a policy through the omnibus law to be in line with the principles of good governance. As for what needs to be put forward in it is ethics towards good governance (Ithemeje, 2020). With the support of the stakeholders who work wholeheartedly and with input from the public, the ideals of good governance through acceleration of legislation (omnibus law) will run as well as expected. Besides that, policy acceleration in overcoming overlapping policies needs to be done very much streamlining policies (Starinov, 2020) in order to support the creation of a comprehensive policy implementation.

In the perspective of public policy studies studi so that the establishment of an omnibus law framework oriented towards the creation of good governance it is necessary to prioritize the principle of justice in formulating a policy. Therefore, there are at least five things that need to be considered in the process of forming the regulatory framework, namely: individual preferences, ethics, freedom, rights and distribution of justice (Bestari, 2020). These things are very important to be applied in an effort to compile a comprehensive and accurate omnibus law in order to create a just public policy. In addition, it is important to resolve conflicts of interest and the truth in public space, so that each individual must use his common sense in order to create a reasonable public space. If individuals use their common sense in the public sphere, a reasonable public sphere will be created. Thus, an omnibus law framework will be created that is just for the whole community. The details can be explained through the following table:

Table 1. The Principles of Drafting The Acceleration of Legislation (omnibus law) In a Public Policy Perspective

Individual Preferences	Give freedom to each individual to maximize their individual preferences as long as they do not harm others, and there is an awareness of solidarity to free every individual who is blocked by freedom to maximize preferences.
Ethics	Ethical values that accommodate the entire moral system that carries the value of equality in maximizing the individual as long as it does not harm others. This value is based on the awareness that we live together in a social unity that needs one another and cares about each other. good, bad, right and wrong issues are measured by a shared awareness of maximizing individual preferences.
Individual Freedom	Negative freedom and positive freedom. Based on understanding and caring will require every individual the freedom to maximize their preferences in the form of material and non material. Obstacles in maximizing these preferences must be removed in the form of negative and positive obstacles.
Individual Rights	Reject the theoretical foundationalism in determining law and what individual rights are. The successor is multi-approach through a deliberation process in public space that meets the criteria for plausibility which is characterized by acceptance of maximizing individual preferences as long as they do not harm others.
Justice distribution	Duties and obligations of social, political and economic institutions formed through deliberation in the public sphere are based on an ethical awareness that we live together in social unity that needs one another and cares for one another. therefore, we must maximize the freedom of individual preferences by distributing individual rights to all individuals in society.

Sumber: adopted from public policy studies (Bestari, 2019).

Furthermore, the challenges faced in the formation of the omnibus law as a solution to the overlapping policies in Indonesia are the seriousness of the government in realizing the acceleration of these laws in order to be able to gather public trust. In the midst of the complexity of the problems in Indonesia, public trust in the government is very important to realize a comprehensive and accurate omnibus law. The reason for the conflict that arose in Indonesia against the omnibus law was the emergence of suspicion from the community towards the dominance of the government. So there is a need for active community involvement not only through the legislative body but also by involving other social institutions that are able to provide space for the community to provide input and oversight.

Based on the description above, it can be understood that the perspective of public policy studies on efforts to accelerate policy through the omnibus law needs to involve all stakeholders - including the community in it - in order to produce a comprehensive and accurate legal and regulatory framework with due regard to the principles justice - effective - efficient and transparent. Moreover, in the era of technology like now it is very possible for people to easily access information related to policy (Agus and Islam, 2019). Thus the ideals to overcome overlapping regulations will be realized properly. If that is successful, a government based on good governance will also be created.

CONCLUSION

Based on the results of the study it can be concluded that the regulatory system in Indonesia is very ideal if implemented properly. However, at present the implementation is less effective because there are many types of regulations that are not directly proportional to the acceleration of development. Of the many regulations, not a few are overlapping in their implementation. Therefore, omnibus law as an effort to accelerate policies that are made more streamlined but has a high level of accreditation and comprehensive can be used as the right solution to overcome the problems mentioned above. Omnibus law itself is a concept of legal products that functions to consolidate various regulations in each different sector to become one large and comprehensive legal product. However, the establishment of the omnibus law framework needs to get more attention - where in the perspective of public policy there needs to be involvement of all parties - including the community - so that its formation does not cause new problems. Therefore the principles of justice, effectiveness, efficiency, accountability and transparency need to be involved. Thus good governance will be created as a milestone in the implementation of policies oriented to the welfare of society.

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