

CANCELLATION CONSTITUTION BASED ON THE PRINCIPLE OF OPENNESS IN THE LEGISLATION PROCESS

(Study To Decision Court Constitution Number 91/PUU-XVIII/2020)

Sirajul Munir

Institute Religion Islam Holy Land

E-mail: sirajulmunir@iainkudus.ac.id

Abstract

The legislative process is tied to several principles, one of which is the principle of openness. Principle as collateral that in the process Legislation must be carried out in a transparent manner and provide wide space for public participation. However, during the legislative process stages of Law Number 11 of 2020 concerning Job Creation, academic texts and draft texts that are being drafted are not easily accessible to the public. This paper aims to analyze the considerations application principle openness in process legislation as a basis for canceling a law. This research was conducted on the Constitutional Court Decision Number 91/PUU-XVIII/2020. The analysis technique used is descriptive qualitative. From the research results it is known that laws can be annulled by the Constitutional Court if in the process the principles of law formation are not properly implemented. Because of Therefore, the upcoming legislative process must maximize the space for participation by the public.

Kata Kunci: Asas keterbukaan, Proses Legslasi, Pembatalan Undang-Undang

Abstract

The concept of openness is one of several that govern the legislative process. This idea ensures that the legislative process will be open to the public and will offer several chances for participation. The public does not have easy access to research papers or draft texts while Law Number 11 of 2020 concerning Job Creation is in the legislative process. The goal of this essay is to examine the factors that should be taken into account when using the openness of the legislative process as justification for repealing a legislation. The Constitutional Court's decision with case number 91/PUU-XVIII/2020 served as the subject of this study. Descriptive qualitative analysis is the method employed. The findings of the research indicate that laws may be revoked.

Keywords: *Fundamentals of transparency, Legislative Process, and Law Repeal*

INTRODUCTION

Every authority has the potential to carry out arbitrary actions by abusing power. Efforts to prevent abuse of power by not concentrating power in just one organ/institution. At least power needs to be separated into three power sectors. namely, the power of the state in forming laws, the authority of which is given to the legislature, the power of the state to implement the law, the authority of which is given to the executive, while to enforce the law, the authority of which is given. judicial institutions (Budiarjo, 2002: 151).

Member institution legislative is representation public Which own authority form Constitution. As institution Which represent people And own function legislation, then all of society's interests should be able to do so accommodated in process formation Constitution. (Yani, 2018: 349). In process legislation there is a number of stages ie starting from the initiative to draft a law, discussing the draft law; and approval of the ratification of the draft law (Asshiddiqie, 2009: 299).

Although ideally member body legislative represents the will of the people, but it is not uncommon for unilateral interests to be smuggled in that do not represent the interests of the people. Therefore, the legislative process still requires community participation For can guard their interests (Jati, 2012: 331). Involving the role of the community in the process of forming statutory regulations is an embodiment of one of the principles in Law Number 12 of 2011 concerning the formation of statutory regulations. invitation is the principle of openness.

Community participation is a means of deliberation to formulate interests and needs that must be met and protected in the legal system. In this way, the process of forming laws does not just fulfill the formal needs of legal documents but is able to produce accommodative regulations. However, in the process of drafting Law Number 11 of 2020 concerning Job Creation, only openness and involvement of elements of society in certain sectors of society with an interest were carried out. However, there are still many other elements that are not involved even though they will feel the impact of the enactment of this law.

In its development, the legislative process continues to ratify Law Number 11 of 2020 concerning Job Creation so that it has Power tie And Power forced. To matter the so

then a formal test was carried out at the Constitutional Court regarding the system method formation regulation Constitution Number 11 Year 2020 concerning Job Creation which is unable to produce accommodative policies Because No maximum application principle openness in the legislative process.

METHOD STUDY

The type of research used is normative juridical, namely focusing on the Constitutional Court Decision Number 91/PUU-XVIII/2020. This research uses a qualitative approach where data is collected through literature study. Literature studies are carried out by reviewing library sources and data collections has been classified. The data classification that has been carried out is then reduced and analyzed using descriptive analysis techniques.

DISCUSSION

Principle Openness In Process Legislation

People become a source of legitimacy of the power of a democratic government. In this way, the people are given the opportunity to be involved in every step of a government. On the other hand, one way of democracy is through a representative system. People elect certain parties to make decisions representing their interests. Constitutionally, one of the institutions that implements a representative system is the People's Representative Council (DPR), whose members are born from direct elections from the people. (Asshiddiqie, 2010: 414).

One of the functions of the DPR is explicitly and definitively stated in Article 20 paragraph (1) of the 1945 Constitution which confirms that the DPR has the power to form laws (legislative function). The existence of these provisions gives rise to juridical consequences, that is, every law is formed must be processed through the DPR institution. Legislative products are a means of realizing people's welfare

The principle of democracy states that law makers are a manifestation of people's sovereignty to realize the will of the people in the legislative process. Process carried out by representative people must represent interest people. Even though representative institutions have been formed, they must not close access to absorb the aspirations of the people and fight for them in institution board representative (Rajab, 2017). The people are the determining variable in the legislative process because the binding power of a legislative product will have an impact on the people. Community participation in the legislative process is a sociological basis for producing a good legal product (Syahmardan, 2012: 144).

Law Number 12 of 2011 concerning the Formation of Legislative Regulations provides a juridical basis that the process of planning, drafting, discussing, ratifying or enacting statutory regulations must be carried out in a transparent and open manner (principle of openness). The legal basis is at the same time give room participation public so that can convey ideas and ideas either orally and/or in writing in the Formation of Legislative Regulations.

As for stages formation regulation the legislation is as follows:

1. Planning

DPR through tool DPR equipment that specifically handles the legislative sector considers proposals from factions, commissions, members of the DPR, DPD, and/or the public in the process of preparing national legislation programs. Thus, at the planning stage for the preparation of the National Legislation Program (Prolegnas), the community was given room For participate in preparation list Bill. The legislative process is required to realize democratization which leads to the involvement of all parties with interests (*stakeholders*). Thus, the principle of openness must be applied when planning preparation begins.

Openness in the planning process requires the dissemination of information that is easily accessible to the public, either through digital platforms or socialized directly. Dissemination is intended to expand the distribution of information so that the wider community or stakeholders can provide input either verbally and/or in writing.

2. Drafting

Before script design Constitution submitted so First, a scientific study or research is carried out on certain problems that will be regulated in the draft law. The results of this research are the background to the emergence of a draft law which is considered a solution in solving society's legal problems. At the drafting stage, people's involvement is often represented by practitioners and experts who have expertise in the field being drafted in the legislative process. However, this does not close access to input from the people directly .

3. Discussion And agreement

There are two levels in discussing draft laws, namely: level I in commission meetings, joint commission meetings, meetings Body Legislation, meeting Body Budget, or meeting committee special

together with the minister representing the President and level II determines the fate of the draft law because it is faced with the choice of being approved as law or rejected.

4. Ratification/determination And invitation.

At this stage, people's participation is no longer there involved. Bills that have received mutual approval are submitted to the president to be ratified into law within a maximum period of 7 days from approval.

Evaluation performance in process legislation can be seen from the quantity and quality produced (Solihah & Witianti, 2016: 292). The legislative process produces legislative products that have three types, namely: first, responsive law. Responsive law was born from the will of the people and enforced with the principles of justice, not just *procedural justice* ; both laws are repressive. Law become a tool of power emphasizes coercion based on social control without considering the needs of the people; the three autonomous laws. Law is designed to control power from potential repression from power so as to create legal justice that is free from power intervention (Teak, 2012:336).

Legislative products are influenced by several important factors (Sarifuddin Sudding, 2014: 370) *First* , exists distribution information extensive review of the draft law to obtain input; *Second* , making objective political decisions based on research scientific For formulate need people; *Third* , The effectiveness of the legislative process without reducing the quality of the legislative product.

Laws are the result of *political* interests. Therefore, the constitution is designed so that laws are not just a means of fulfillment political interests by making space participation as right public And become obligation legislative institutions to provide means of participation. In Article 96 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, for example, it is clear that public participation is something that is mandatory in the legislative process.

Consideration Basic Deep openness Cancellation Law _

There were very significant changes to constitutional law post it changed Constitution Base Republic Country Indonesia Year 1945. In perspective *judiciary review* , testing a legislative products through institutions justice is only carried out to regulation in lower Constitution. However, judicial review of the Constitution cannot be carried out to institution court. Post amendment Law Invite Base Country Republic Indonesia Year 1945 And birth

Constitutional Court then judicial review of the new Constitution can be carried out (Triningsih, 2016:129).

There is expansion *judiciary review* show happen shift the supremacy of parliament to the supremacy of the constitution which positions all state institutions as equal. Constitutional supremacy provides *Juicy room review* for the people to sue a legal product. Meanwhile, legal products produced in a parliamentary supremacy system cannot be contested, because the legislature is considered to represent the people and its legislation is the will of the people it represents (Kurniawati & Liany, 2019: 113). Constitutional supremacy is expected to be able to realize equality and balance in institutional relations so that democracy is sovereign by the people can guaranteed through constitution (Fudin, 2022:213)

The variety of substances in Law Number 11 of 2020 concerning Job Creation certainly causes complexity both in terms of discussion and the quantity of articles produced, making it almost impossible to monitor carefully and thoroughly. Especially considering that the government is also speeding up the process prepared under the pretext of urgent need. It is an obligation in every drafting of legislation that the legal norms that are prepared originate from good planning. The interests of society are certainly above the interests of individuals or certain groups (Asshiddiqie, 2006:320). If this is not done then Legal norms in laws will be complained about to the Constitutional Court through a *judicial review process* . The Constitutional Court is a pillar in upholding the principles of the rule of law and providing maximum protection to democracy And rights base inhabitant country (Rishan, 2021:3).

Be found two type testing law namely: first, judicial material. In the review process, an authorized institution, in this case the Constitutional Court, investigates a law so that it can assess the conflict between statutory regulations and regulations at a higher level; second, formal judicial review. On the part of the Constitutional Court, it assesses regarding application procedure Which applies on moment formulate a law (Amsari, 2011:79).

Regarding with testing Constitution Number 11 Year 2020 concerning Job Creation, the applicant considers that in its formation it has been hit principle formation regulation Which Good Wrong the only one principle of openness. One indication is that the drafting process only involves certain elements of society, namely the labor element. However, there are still many organizational elements of labor associations that exist feel No involved. Besides That happen changes _

The text of the Job Creation Bill which concerns the content of paragraphs and articles or part of the article in Law Number 11 of 2020 on Job Creation after mutual approval. Formally, Law Number 11 of the Year 2020 about Create Work No fulfil provision formation of laws based on Article 22A of the 1945 Constitution which was delegated in law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Community participation is used as part of the formal testing assessment standards, thereby strengthening the formal testing assessment requirements. Community participation is a right guaranteed by constitution based on Article 27 paragraph (1) and Article 28C paragraph (2) of the 1945 Constitution. Involving the community cannot be separated from the principle of popular sovereignty as an embodiment of the fulfillment of constitutional rights. If the law formation process is not carried out openly, it will close down public participation to discuss, provide input and exercise control (Arief & Ramadani, 2021: 111).

For the Constitutional Court, participation is not just a formal legal requirement in the process of forming Law Number 11 of 2020 concerning Create Work. Participation in formation Law Number 11 of 2020 Job Creation must be carried out meaningfully, namely involvement public in a way truly (*meaningful participation*). At least, there is three precondition Which must fulfilled for can considered participation meaningful, namely: First, every person has the right to express his opinion; secondly, every opinion has the right to be considered; third, the right to get a response from above opinion Which be delivered. Participation is intended primarily for parties who experience the direct impact of the legislation being processed. Apart from that, parties who have concerns about Law Number 11 of 2020 concerning Job Creation must also be treated the same.

Community participation can be developed in at least 5 (five) models, namely: first, in the working group for drafting legislation involve member public Which deemed to have capacity And skill as well as independent; second, open room discussion, especially for interested parties; third, carrying out validity tests on certain parties to strengthen arguments; fourthly, holding deliberations before being formally discussed in competent institutions; expand publications to get input society (Riskiyono, 2015:168).

More meaningful community participation (meaningful participation) will be used to assess the validity of the formalities of forming laws that are attached or linked to the principles formation regulation legislation. Revealed fact

in the formal review of the formation of Law Number 11 of 2020 concerning Job Creation that the drafting process did not provide optimal space for participation in the community.

Validity participation public Which meaningful (*meaningful participation*) started with information disclosure measures. Information transparency shows that there is nothing to hide. However, it turns out that draft Law Number 11 of 2020 on Job Creation cannot be easily accessed by the public. Even the community groups involved do not know for certain the material discussed in draft Law Number 11 of 2020 concerning Job Creation. Apart from that, changes that did not involve the community appeared after the approval, adding to the suspicion that something hidden was happening. Even though based on Article 96 paragraph (4) Article 96 of Law no. 12 of 2011 concerning the Formation of Legislative Regulations must facilitate access to important laws in an effort to provide oral and/or written input.

In Decision Number 91/PUU-XVIII/2020 Court Constitution states that the Act Number 11 2020 regarding Job Creation is conditional and unconstitutional and needs improvement because the process does not facilitate access to information and does not maximize community participation. In this decision, the Constitutional Court does not only see community participation as a mere formality requirement for the fulfillment of a process legislation but goes much deeper into the essence of participation.

CONCLUSION

Based on the discussion above, it can be concluded that the Constitutional Court can cancel a law because it conflicts with the principles of law formation, as mandated by Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Which is embodiment order constitution in Article 22A of the 1945 Constitution in particular regarding must include community participation. The principle of openness in the legislative process is not just to fulfill the requirements for the formation of statutory regulations. However, it is mandatory to fulfill the essence of the principle of openness, namely maximum and meaningful participation.

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