International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 01-10-2023, Accepted: 16-10-2023, Published: 02-11-2023
Volume 9, Issue 6, 2023, Page No. 1-5

Legal reconstruction of the "*Mandatory*" phrase implications in the drafting of law based on justice values

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Abstract
This research aims to analyze and examine the weaknesses of the use of the phrase "*mandatory*" in the formation of statutory regulations according to Law Number 12 of 2011, as well as reconstructing the phrase "*mandatory*" Which has implications for the preparation of laws and regulations based on the value of justice. This research uses the constructivism paradigm. The approach method used is sociological juridical, with research specifications being descriptive analysis. The data used are primary and secondary data, which are then analyzed qualitatively.
The research results show that the Weaknesses regarding the use of the phrase "*mandatory*" in current laws and regulations in terms of: (a) legal substance: (i) it is not regulated expressly in the laws and regulations, (b) legal structure: (i) regarding strength attachments to statutory regulations, (ii) inconsistent formation of regulations, (iii) weakness of control in the substantive content; (c) legal culture: (i) sectoral ego of institutions, and (ii) inconsistent attitudes of legislators in drafting regulations. Therefore, the Reconstruction of the phrase "*Mandatory*" has implications for the preparation of laws and regulations based on Law Number 12 of 2011 into the constitution and includes Pancasila in its position as the source of all sources of law in the hierarchy of laws and regulations at the highest position. A reconstruction of the use of the phrase "*mandatory*" in attachment II number 268 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations is as follows: To state the existence of an obligation that has been determined, use the word *mandatory*. If these obligations are not fulfilled, the person concerned is subject to sanctions, with the following conditions: 1) Sanctions are imposed on legal subjects. 2) Sanctions are imposed on the head of government according to the level of authority. The provisions referred to in point 2 (two) apply as follows: a. Regulations made by the President can impose sanctions on Governors, Regents, or Mayors; Regulations made by the Governor can impose sanctions on the Regent or Mayor; Regulations made by the Regent or Mayor can impose sanctions on the Village Head or Subdistrict Head.

Keywords: Legal reconstruction, *Mandatory*, legal drafting, justice value

Introduction

The government's work plan in creating a work program actually has only one aim, namely to improve the level of people's welfare and create a sense of justice in society, that's why if the target is prosperity and justice in people's lives then on this basis the most fundamental thing is legal certainty (Widodo, 2018).
Apart from the preparation and formation of statutory regulations, of course, it cannot be separated from the fact that these regulations can be implemented, of course, one of them is through coercion and then the application of sanctions. Law Number 12 of 2011 concerning the Formation of Legislative Regulations and its attachments certainly has an interesting phrase to discuss in order to guarantee legal certainty, so that it can be used as a reference in the preparation and formation of statutory regulations.
The phrase "*mandatory*" in the attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations must of course be based on appropriate sanctions if in the process of making regulations or policies, both at the central and regional levels, legal certainty is needed in this phrase, even though it is only one phrase, from a legal perspective, it has many legal consequences. Because in formulating the phrase "*mandatory*" of course it must be followed by sanctions. This is as regulated in attachment II number 268 of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations which reads:
268. To express the existence of an obligation that has been determined, use the word *mandatory*. If these obligations are not fulfilled, the person concerned will be subject to sanctions.
Of the several provisions contained in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations regarding articles in the body of statutory regulations that contain a norm, the explanation only provides an official interpretation of these articles. Explanations of statutory regulations cannot contain a formulation of new norms or expand/narrow/add to norms contained in articles in the body of statutory regulations. Apart from that, the Attachment to a statutory regulation is an inseparable part of the statutory regulation. Therefore, an attachment may contain further descriptions of descriptions or norms that already exist in the body of statutory regulations. The conditions contained in the attachment to a statutory regulation also have the same binding force as the body of the statutory regulation (Kozhokar, 2023) [3].
Regarding the adoption of the legal basis in attachment II number 268 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations regarding the phrase "*mandatory*" in the preparation of statutory regulations with the hope of being able to contribute comprehensive thought to the development of law in Indonesia (Toebagus 2022) [8],

especially those related to problems in drafting the many laws and regulations that use the phrase "*mandatory*" but are not accompanied by sanctions, and then become confused when these sanctions are used to provide sanctions against those making these regulations, needs to be studied further and organized into research with the following main problem:

1. What are the weaknesses of The "*Mandatory*" Phrase Implications In The Drafting Of Law in Indonesia currently?
2. How Is The Legal Reconstruction Of The "*Mandatory*" Phrase Implications In The Drafting Of Law Based On The Value Of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [2]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of the "*Mandatory*" Phrase Implications in The Drafting of Law In Indonesia Currently

In the context of drafting statutory regulations, Law Number 12 of 2011 concerning the Formation of Legislative Regulations is a material matter that forms the basis for every creation of Legislative Regulations, gives an explanation and Attachment regarding the mechanism for drafting regulations, in substance if the statutory regulations do not comply with the provisions as regulated in the Attachment then they are materially flawed (Widodo, 2019). The unfortunate thing is that when drafting it, care is not taken so that in the drafting there are multiple interpretations in it. Regarding Lamitran II which states *mandatory* phrases, sanctions will be given, but not all words are *mandatory*, starting from central and regional regulations, of course the phrases are *mandatory* without sanctions, so in the attachment, in substance, there needs to be a clear change so that it is in accordance with the principles contained in Law Number 12 of 2011 concerning the Formation of Legislative Regulations where substantive clarity needs to be carried out so that there are no overlaps and inconsistencies between one statutory regulation and another (Putra, 2023) [6].

Mistakes that often occur are both in formulating and placing formulations in the use of the phrase "*mandatory*" in drafting laws and regulations that are not accompanied by sanctions. There are legislators who place the phrase "*mandatory*" in terms of subject or object. There needs to be a more detailed explanation that can be implemented regarding this matter (Parada, 2021) [5].

Techniques for Preparing Legislative Regulations. These two provisions have essentially different functions from one another. Looking at the function of attachments, if necessary, in Law Number 12 of 2011, their role is very significant.

Furthermore, according to Attachment I to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, the explanation cannot mention things more broadly than those mentioned in an article contained in the body of the statutory regulations, if what is mentioned contains a new norm, or expand the norms contained in the articles in the body of the statutory regulations. Because basically an explanation only provides an interpretation of the norms contained in an article. The explanation cannot contain a formulation of new norms or expand/narrow/add to norms contained in articles in the body of statutory regulations.

This means that what is binding as a norm (and can be used as a legal basis) are the articles in the body of the statutory regulations and not the explanation. Because the explanation only functions as an official interpretation of the articles contained in the body. The function and role of the Attachment to statutory regulations is not explained in Law Number 12 of 2011 concerning the Formation of Legislative Regulations, but it is stated in Number 192 of Appendix I to Law Number 12 of 2011 concerning the Formation of Legislative Regulations that in the case of Legislative Regulations -Invitations require attachments, it is stated in the body that the attachments in question are an inseparable part of the Legislative Regulations. Then, according to Number 193 of Appendix I of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, attachments can contain, among other things, descriptions, lists, tables, pictures, maps, and sketches.

The article in the body of the statutory regulations which states that attachments are an inseparable part of the statutory regulations is the regulation of Article 44 paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, which determines that: "Provisions regarding techniques for preparing Academic Papers as intended in paragraph (1) are listed in Appendix I which is an inseparable part of this Law."

So, a statutory regulation that requires an attachment, for example, to contain a description, table, or map, can contain an attachment as an inseparable part of the statutory regulation itself. So the attachment must be read as an integral part of the articles in the body of the statutory regulations and has binding force like the statutory regulations themselves.

Several statutory regulations, both before Law Number 12 of 2011 concerning the Formation of Legislative Regulations and following this law were formed, of course, there are many regulations that still use the phrase "*mandatory*" in the preparation of statutory regulations but are not accompanied by sanctions. The use of the phrase "*mandatory*" in the preparation and drafting of legislative regulations must be adjusted to existing provisions, but in reality, there are still many that are not appropriate. Furthermore, it is not explicitly regulated regarding regulations that are not following this provision, in this case, attachment II of Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, so they must be null and void or can be canceled.

However, there needs to be confirmation that if the regulations are not following the attachment to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, then the regulations are null and void. Furthermore, there needs to be consistency, if the center starts by including the phrase "*mandatory*" without accompanying sanctions, then regional governments will automatically follow suit. Even though in substance this matter has been explicitly explained in the Attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

It is conceivable that there may be laws that in their drafting are not following Law Number 12 of 2011 concerning the Formation of Legislative Regulations, but which are still in force. Unifying will make it easier to do this, it is enough to cancel the law and at the same time it can be used to cancel the regulations that are under it. This applies to testing the Regional Regulations. Because executive review is no longer allowed, a special position must be given to the center when reviewing regional regulations that violate the principle of decentralization. Therefore, the central government and provincial governments are given special legal standing to propose a review of regional regulations.

Thus, uncertainty in drafting laws and regulations that use the phrase "*mandatory*" but not sanctions, results in regulations that lead to irregularities and confusion in substance. Therefore, after controlling, limiting coverage is also an equally important step. This means that there must be improvements to Law Number 12 of 2011, both regarding the reference to attachments that need to be emphasized and also regarding the phrase "*mandatory*" in the Attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations which are currently in force. In future improvements, it must substantially guarantee legal certainty.

2. Legal Reconstruction of the "*Mandatory*" Phrase Implications in the Drafting of Law Based on the Value of Justice

The use of the phrase "*Mandatory*" is regulated in Appendix II number 268 which states as follows: "*To express the existence of an obligation that has been determined, use the word mandatory. If these obligations are not fulfilled, the person concerned will be subject to sanctions*."

The contents of the attachment, both in the Academic Text in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, it is not explained in detail. And also regarding the body or explanation, there is no detailed explanation, which creates confusion which of course contradicts the substance of Law Number 12 of 2011 concerning the Formation of Legislative Regulations regarding the principles in the Formation of Legislative Regulations. Article 5 letter f regarding clarity of formulation in the explanation contained in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations states that:

What is meant by the "*principle of clarity of formulation*" is that every Legislative Regulation must meet the technical requirements for drafting Legislative Regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so that it does not give rise to various kinds of interpretations in its implementation.

Looking at attachment II number 268, who is the person concerned here? And can it be effective in implementing sanctions? Of course, this requires reconstruction in its preparation.

Law Number 12 of 2011 itself has been amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, and amended by a second amendment based on Law Number 13 of 2022 concerning Second Amendments to Laws Number 12 of 2011 concerning the Formation of Legislative Regulations. Regulates hierarchy in Article 7 paragraph (1), namely: Types and hierarchy of Legislative Regulations consisting of: a. The 1945 Constitution of the Republic of Indonesia; b. Decree of the People's Consultative Assembly; c. Law/Government Regulation in Lieu of Law; d. Government regulations; e. Presidential decree; f. Provincial Regional Regulations; and g. Regency/City Regional Regulations.

Seeing hierarchy in the formation of legislative regulations becomes a problem when in the formation of norms in the regulations there is a "*mandatory*" phrase that applies to the makers of the law, for example: a. In the drafting of the Law there is a phrase "*mandatory*" applied to the President, so how to provide sanctions for legal subjects who in fact are implementers of the Law itself and who can and dare to provide sanctions. b. In preparing regional legal products, in this case, Provincial and/or Regency and City Regional Regulations, for example, the legal norms regulate the obligations of what action must be taken by the Governor, so the authority that can impose sanctions on Provincial Regulations is Satpol PP, whether Satpol PP dares to impose sanctions on Governor. The same applies to district or city regional leaders (Bidzilia, 2023) [1].

Things that need to be detailed in attachment II number 268 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations are to express the existence of an obligation that has been determined, use the word *mandatory*. If these obligations are not fulfilled, the person concerned will be subject to sanctions using the following conditions:

a. Regulations made by the President can impose sanctions on Governors, Regents or Mayors.

b. Regulations made by the Governor can impose sanctions on the Regent or Mayor.
c. Regulations made by the Regent or Mayor can impose sanctions on the Village Head or Subdistrict Head.

The phrase "*Mandatory*" with the formulation above can certainly provide legal certainty considering that those given sanctions are legal subjects who do not carry out an obligation or even commit a prohibited act (Masruroh, 2022) [4]. In this way, the relationship between legal norms in the preparation of legal regulations which then has implications for the preparation of no disharmony, synchronization, and conflict between legal norms.

Based on the explanation above, the reconstruction of the value of using the phrase "*mandatory*" in the formation of legislative regulations according to Law Number 12 of 2011 is based on the value of justice, realizing:

a. Clarity of the position in the Attachment to Law Number 12 of 2011 on the phrase "*mandatory*" in the formation of statutory regulations and the relationship between legal norms, which has implications for harmonization and synchronization between legal norms in the preparation of statutory regulations;
b. Regularity in the use of the phrase "*mandatory*" in drafting laws and regulations in Indonesia by developing a paradigm based on the legal ideals of Pancasila towards national legal order, so that it has consequences for the dynamics of social, national and state life and becomes a way of life adopted to provide coherence and direction in every thought and action;
c. Formal testing based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations by Judicial Institutions (judicial review) for all procedures for the formation of statutory regulations that are integrated into one judicial institution, the aim of which is to achieve philosophical and material consistency of the law This is in one vision and coherence of thought within the constitutional framework, namely by the Constitutional Court.

Conclusion

1. The weakness found by the author regarding the use of the word "*Mandatory*" is that there is no explicit mention that every Formation of Legislative Regulations that does not follow the Attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations is null and void or can be canceled, it is not only mentioned in several articles. In Law Number 12 of 2011 concerning the Formation of Legislative Regulations, it is stated that the attachment is an inseparable unit in this regulation. Other weaknesses regarding several problems in the Appendix are The lack of clarity and inconsistency in the substantive definitions contained in the Attachment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations often contain unclear or inconsistent definitions, one of which is the use of the phrase "*mandatory*" which can lead to different interpretations and difficulties in drafting and even enforcing the law, The absence of a detailed explanation of the legal structure in this attachment does not provide a detailed enough explanation regarding the implementation of the Law, including the use of the phrase "*Mandatory*". This can cause confusion and difficulties in applying the law, and Difficulties in drafting and even enforcing laws culturally, of course, the Attachment in Law Number 12 of 2011 concerning the Formation of Legislative Regulations sometimes does not provide clear instructions on how to implement and enforce Law Number 12 of 2011 concerning the Formation of Legislative Regulations -The invitation. This can make it difficult for legal institutions to enforce the law consistently and effectively.

2. Reconstructing the use of the phrase "*mandatory*" in the preparation of statutory regulations according to Law Number 12 of 2011 based on the value of justice is to explain in detail. Things that need to be detailed in attachment II number 268 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations To express the existence of an obligation that has been determined, use the word *mandatory*. If these obligations are not fulfilled, the person concerned will be subject to sanctions, with the following conditions: a. Sanctions are imposed on legal subjects. b. Sanctions are imposed on the head of government according to the level of authority. The provisions referred to in point 2 (two) apply as follows: a. Regulations made by the President can impose sanctions on Governors, Regents or Mayors. b. Regulations made by the Governor can impose sanctions on the Regent or Mayor. c. Regulations made by the Regent or Mayor can impose sanctions on the Village Head or Subdistrict Head. Based on this, the reconstruction of the value of using the phrase "*mandatory*" in the formation of legislative regulations according to Law Number 12 of 2011 is based on the value of justice, realizing clarity of the position in the Attachment to Law Number 12 of 2011 on the phrase "*mandatory*" in the formation of statutory regulations and the relationship between legal norms, which has implications for harmonization and synchronization between legal norms in the preparation of statutory regulations; Regularity in the use of the phrase "*mandatory*" in drafting laws and regulations in Indonesia by developing a paradigm based on the legal ideals of Pancasila towards national legal order, so that it has consequences for the dynamics of social, national and state life and becomes a way of life adopted to provide coherence and directors on every thought and action; Formal review based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations by Judicial Institutions (judicial review) for all procedures for the formation of statutory regulations that are integrated with one judicial institution, the aim of which is to achieve philosophical consistency and the legal material in one vision and coherence of thought within the constitutional framework, namely by the Constitutional Court.

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