

THE EXISTENCE OF STATE POLICY GUIDELINES IN THE PERSPECTIVE OF ORDERING THE ORDER OF LAWS AND REGULATIONS



Tanti Kirana Utami *1✉

*1 Fakultas Hukum Universitas Suryakencana, Indonesia



DOI: <https://doi.org/10.29121/granthaalayah.v8.i12.2020.2597>

Article Type: Research Article

Article Citation: Tanti Kirana Utami (2020). THE EXISTENCE OF STATE POLICY GUIDELINES IN THE PERSPECTIVE OF ORDERING THE ORDER OF LAWS AND REGULATIONS. International Journal of Research - GRANTHAALAYAH, 8(12), 48-53. <https://doi.org/10.29121/granthaalayah.v8.i12.2020.2597>

Received Date: 29 November 2020

Accepted Date: 25 December 2020

Keywords:

GBHN
Law
Government
Development

ABSTRACT

The emergence of the discourse of reviving the Outlines of the State Direction (starting now referred to as GBHN) or in standard terms is known as the reformulation of the national development planning system with the GBHN model derived from the recommendations of the Indonesian MPR for the 2009-2014 period is a must. The purpose of this article is to analyze how the Outlines of State Policy Existence in the perspective of a hierarchy of laws and regulations. This article concludes that the existence of State Policy Guidelines in the Hierarchy of rules and regulations and the state administration system must always be maintained because it aims to optimize good governance that can synergize the development programs of the Central Government and Regional Governments.

1. INTRODUCTION

The Indonesian nation needs the state direction as a developing country to strengthen the law and certainty of development in realizing the country's goals. The purpose of the Indonesian State itself has been clearly defined in the Preamble to the 1945 Constitution, namely: "to protect the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice." The goal of the State, as stated in the constitution, becomes a philosophical foundation in the development of the country in all fields. In this regard, the State Policy becomes a forum for the elaboration of state objectives which serves as a guideline and direction for state development (Lutfil Ansori, 2019).

The directions in the sizeable Indonesian dictionary mean the law of goals or guidelines. History shows that the existence of the State Policy in the Indonesian constitutional system has changed. In the Old Order and New Order eras, the State Direction played a very vital role as a guideline for state development, at that time its traditional form was referred to as State Policy Guidelines (GBHN). However, after the reform, the existence of the State Direction disappeared as the 1945 Constitution was amended, which eliminated the presence of the State Direction in the

constitution. After the reform era, the role of the GBHN as a state direction that serves as a guideline and law for State development was replaced by the National Development Planning System (SPPN) with various derivative instruments. Such as the National Long Term Development Plan (RPJPN) and the National Medium Term Development Plan (RPJMN). However, over time, SPPN was deemed unable to play a role as the state policy and could not be called the State Policy. Therefore, recently there have been attempts to restructure the national development planning system to guarantee the direction and certainty of development in the Indonesian constitutional system through the reconstruction of the State Direction (Lutfil Ansori, 2019). For this reason, it must be regulated by written, rational, planned, universal and responsive laws in adapting to community development and legal certainty (I Gede Pantja Astawa and Suprin Na'a, 2012). The formulation of the problem in this research is how the existence of the Outlines of State Policy in the perspective of the hierarchy of laws and regulations?

2. DISCUSSIONS

2.1. DEFINITION AND HISTORICAL ASPECTS OF STATE POLICY GUIDELINES (GBHN)

Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that: "The State of Indonesia is a Unitary State in the form of a Republic", paragraph (2) states: "Sovereignty is in the hands of the people and is exercised according to the Constitution", And paragraph (3) says: "The State of Indonesia is a State of law" (Tanti Kirana Utami, 2013). Indonesia as a constitutional state is listed in Article 1 paragraph (3) of the third amendment to the 1945 Constitution of the Republic of Indonesia which states that Indonesia adheres to the principle and the concept of Pancasila contained in the Preamble to 1945 Constitution (Henny Nuraeny and Tanti Kirana Utami, 2015). The rule of law is a state that enforces the rule of law to uphold truth and justice, and no power is not accounted for (Dwidja Priyatno, 2005).

IN MPR Decree No. IV / MPR / 1973 formulated the definition of GBHN as "State Policy in broad outlines which is essentially a general pattern of National Development established by the MPR". In MPR Decree No. II / MPR / 1978, MPR Decree No. IV / MPR / 1983, and MPR Decree No. II / MPR / 1988 are the same as the GBHN as stated in MPR Decree No. IV / MPR / 1973. The GBHN in the Tap-Tap is interpreted as the state's direction in an outline which is essentially a national development pattern which includes the Basic National Development Pattern, the General Pattern of Long-Term Development, and the General Pattern of Five-Year Development.

The definition of GBHN, according to MPR Decree No. II / MPR / 1993 and MPR Decree No. II / MPR / 1998 are state policies regarding national development in outline as a statement of the will of the people which is stipulated by the MPR every five years. The GBHN during the Old Order era was intended to provide clear and comprehensive directions and guidelines for carrying out the post-independence Indonesian revolution. Explanation of Presidential Decree No. 1 of 1960 concerning the Outlines of the State Policy stated that before the People's Consultative Assembly stipulated the outlines of the state direction, to carry out the continuation of the Indonesian revolution, it was necessary to have specific and clear guidance of goals and guidelines.

During the New Order era, the emphasis on the State Policy was national development, which at that time was also accommodated in the form of GBHN. The implementation of the GBHN was then described in the Five-Year Development Plan (REPELITA) which had been running from 1969 (REPELITA I) to 1998 (REPELITA VI).

The collapse of the New Order era in May 1998 marked the birth of a new era, commonly known as the reform era. During this reformation period, the last GBHN was born through MPR Decree No. IV/MPR/1999 concerning State Policy Guidelines for the Year 1999-2004. The 1999-2004 GBHN had a different content from the GBHN during the New Order era, with quite fundamental changes. In the period of the New Order, the GBHN was the state's direction for national development, while the GBHN in the reform era was the direction for state administration.

The substance of the GBHN which is then outlined in the form of MPR decrees is regulated in several MPR decrees that regulate GBHN, such as MPRS/No.1/MPRS/1960 Tap, MPR Decree/No. IV/1973, MPR Decree/No. IV/MPR/1999, there are very significant differences in the provisions. In the MPRS Decree/No.1/1960, the GBHN were not regulated in a systematic and detailed manner. However, in President Soekarno's mandate on August 17, 1959, it became the fundamental basis for the GBHN. In the MPR Decree/No.4/1973, the GBHN began to be designed systematically and compiled as Chapter I Introduction, Chapter II Basic Patterns of National Development, Chapter III General Patterns of Long-Term Development, Chapter IV General Patterns of Second Five Year Development, and Chapter V Closing. The MPR also gave the main goal of achieving a balance between agriculture and industry in the

long-term development direction, so that economic development became a priority. Developments outside the economy are supportive and complementary to the economic field. In the MPR Decree/No. IV/1999, the structure and systematics of the GBHN changed. GBHN consists of Chapter I Introduction, Chapter II General Conditions, Chapter III Vision and Mission, Chapter IV Policy Direction, Chapter V Implementation Rules, and Chapter VI Closing. The direction of development policy in the GBHN has also changed from previously which only focused on the economic sector now to all fields, be it social, political, economic, which were left to the market, legal, cultural, and defence and security mechanisms. For positivism, there is no law other than positive law, which is law based on sovereign authority. For positivism, positive law is different when compared to other principles based on morality, religion, social customs (M. Erwin, 2001).

2.2. THE EXISTENCE OF GBHN IN THE HIERARCHY OF LEGISLATION

Stufenordnung der Rechtsnormen" states that the composition of legal norms consists of Staatsfundamentalnorm (State fundamental norms), Staatsgrundgesetz (Basic State Rules), Formell Gesetz (ceremonial law), and Verordnung and autonomy satzung (implementing regulations and autonomous regulations), in Indonesian legal norms according to A. Hamid S. Attami have grouped that the Staatsfundamentalnorm (State fundamental norms) consists of Pancasila and the Preamble of the 1945 Constitution, Staatsgrundgesetz (Basic State Rules) consists of the Body of the 1945 Constitution, MPR Decrees, and State Administration Conventions, Formell Gesetz (formal laws) namely Laws, and Verordnung and autonomy satzung hierarchically starting from Government Regulations to Regent or Mayor Decrees (Widayati, Absori, & Aidul Fitriaciada Azhari, 2014).

MPRS Decree Number XX / MPRS / 1966 was formed during the early days of the New Order government. The order of the statutory regulations as attached in attachment II of the MPRS Decree Number XX / MPRS / 1966 is as follows: 1) The 1945 Constitution of the Republic of Indonesia; 2) MPR Decree; 3) Laws / Government Regulations instead of Laws; 4) Government Regulations; 6) Presidential Decree; 7) Other implementing regulations such as Ministerial Regulations, Ministerial Instruction and others.

The function of the MPR at that time was to stipulate the Constitution, determine the guidelines for the state policy and elect the president and vice president. Based on this authority, the MPR is not an institution that exercises its control regularly. The nature of the MPR's work was not permanent, but ad hoc. Even though on paper the MPR as a state institution does continue to exist, but in an actual or real sense, the MPR itself can only be said to exist (actual existence) when its authority or function is being implemented (inaction) (Jimly Asshiddiqie, 2006).

Apart from being viewed from the function of the MPR, the placement of MPR Decrees under the 1945 Constitution can also be considered in terms of amendments. To amend the Constitution, the terms and procedures are determined in the Basic Law itself, namely in Article 37, whereas to amend or revoke the MPR Decree, the requirements and procedures are not required as changing the Basic Law.

MPR Decree No. III / MPR / 2000 was formed at the beginning of reform. After the collapse of the New Order government which began with the MPR Special Session in 1998 and continued with the MPR General Session in 1999, then continued with the MPR Annual Session in 2000, only then did the MPR stipulate MPR Decree Number III / MPR / 2000 as a substitute for MPRS Decree No. XX / MPRS / 1966.

The order of the laws and regulations of the Republic of Indonesia according to Article 2 of the MPR Decree Number III / MPR / 2000 is as follows: 1) The 1945 Constitution; 2) Decree of the People's Consultative Assembly of the Republic of Indonesia; 3) Law; 4) Government Regulation in Lieu of Law; 5) Government Regulations; 6) Presidential Decree; 7) Regional Regulations.

The position of the MPR Decree has not changed, the same as that stipulated in the MPRS Decree Number XX / MPRS / 1966. Even though the amendment process of the 1945 Constitution has been carried out and the MPR results from the post-reform elections have been formed, when the MPR Decree Number III / MPR / 2000 was created, the MPR was still the highest state institution and the full implementer of the people's sovereignty, so that the MPR's authority and function were not yet changed. The MPR's administration has increased, namely to carry out a judicial review if it contradicts the 1945 Constitution and the MPR Decree, as stipulated in Article 5 paragraph (1) of MPR Decree Number III / MPR / 2000.

Types and hierarchies of statutory regulations according to the provisions of Article 7 paragraph (1) of Law Number 10 of 2004 are: 1) The 1945 Constitution of the Republic of Indonesia; 2) Laws / Government Regulations in Lieu of Laws; 3) Government Regulations; 4) Presidential Regulation; 6) Regional Regulations. Law Number 10 of

2004 does not include MPR Decrees in the types and hierarchy of statutory regulations. This is because, when Law Number 10 of 2004 was formed, the MPR was no longer positioned as the highest state institution and the full implementer of the people's sovereignty. The MPR is not authorized to issue regulatory MPR decrees. The MPR legal product that is regulatory is when the MPR makes changes to the 1945 Constitution.

The types and hierarchy of statutory regulations according to the provisions of Article 7 paragraph (1) of Law Number 12 the Year 2011 are: 1) The 1945 Constitution of the Republic of Indonesia; 2) Decree of the People's Consultative Assembly; 3) Laws / Government Regulations in Lieu of Laws; 4) Government Regulations; 5) Presidential Regulation; 6) Regional Regulations.

Wicpto Setiadi stated, harmonization is an effort to harmonize, adjust, solidify, and round the conception of a draft of the legislation, with other laws and regulations, whether higher, equal, or lower, and other matters besides statutory regulations. So that they are arranged systematically, not contradicting each other or overlapping (Setiadi and Wicpto, 2007).

According to A. Hamid S. Attamimi, the MPR Decree coincides with the Body of the 1945 Constitution, based on Hans Nawiasky's theory above, is that at that time the MPR was the highest state institution and the full actor of the people's sovereignty. The MPR Decree as the Body of the 1945 Constitution is a Staatsgrundgesetz (Basic State Rules) which contains outlines or principles of state policy. Legal norms The MPR decision based on Hart's HLA theory is a single legal norm and is not adhered to by traditional secondary standards (Setiadi and Wicpto, 2007). Constitutions 1945, MPR Decree and GBHN are basic rules that have a higher position than the law, and their content only regulates behaviour (primary norms) while laws are in addition to explicit norms and are equipped with secondary criteria of procedures and sanctions for their enforcement (Ni Ketut Sri Utari, 2020).

The placement of the MPR Decrees into the types and hierarchy of statutory regulations as regulated in Law Number 12 the Year 2011 has not been optimal, because even though the MPR Decrees have been re-entered into the type and hierarchy of statutory regulations and are placed higher than the Law / Government Regulations in Lieu of Laws, but in fact, MPR decrees have not been used as a legal basis in the formation of laws and regulations under MPR decrees, such as in the construction of Laws and Government Regulations in Lieu of Laws because most of the MPR decrees are the best hiking. Whereas one of the meanings of the hierarchy of statutory regulations is that laws and regulations of a higher position are used as the legal basis or basis for lower or lower statutory limitations so that the contents or material of the contents of the more insufficient statutory regulations may not deviate or conflict with laws and regulations of a higher level. Therefore, the Constitutional Court maintains the Constitution and has jurisdiction if the GBHN legal product is in the form of an MPR Decree. In reconstructing the position of the MPR Decree in the Indonesian constitutional system, it is necessary first to rebuild the MPR institution and reconstruct the MPR's authority (Widayati, Absori, & Aidul Fitriaciada Azhari, 2014).

The authority of the MPR in making policies to determine the direction of the state is stated in the MPR's legal products, which are currently known as MPR decrees. The use of the term MPR Decree can lead to connotations, the content of which is *beschikking*, not *regeling*. In connection with the implementation of people's sovereignty, the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (2) states that power is in the hands of the people and is exercised according to the Constitution. This means that the MPR determines the implementation of people's sovereignty because the MPR is a state institution that is given the authority to amend and enact the Constitution. Therefore, the MPR institution still needs its existence in the Indonesian constitutional system. The formation of statutory regulations must refer to the basis for the construction of statutory rules or statutory science (*gesetzgebungslehre*) (Hamzah Halim dan Kemal Redindo Syahrul Putera, 2010).

3. CONCLUSIONS

Reformulation of the Guidelines of State Policy has a role as an instrument of governance. The existence of the Outlines of State Policy in the Hierarchy of laws and regulations and the state administration system aims to optimize good management that can synergize the development programs of the Central Government and Regional Governments.

SOURCES OF FUNDING

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

CONFLICT OF INTEREST

The author have declared that no competing interests exist.

ACKNOWLEDGMENT

None.

REFERENCES

- [1] Dwidja Priyatno, 2005, Kapita Selekta Hukum Pidana, STHB Pres, Bandung.
- [2] Hamzah Halim dan Kemal Redindo Syahrul Putera, 2010, Cara Praktis Menyusun & Merancang Peraturan Daerah; Suatu Kajian Teoritis & Praktis Disertai Manual; Konsepsi Teoritis Menuju Artikulasi Empiris, Kencana Prenada Media Group, Jakarta.
- [3] Henny Nuraeny dan Tanti Kirana Utami, 2015, Legal Protection Against Children Who Are Victims of Human Trafficking in Cianjur District Studied by Human Rights Perspective, Jurnal Dinamika Hukum, Vol. 15 No. 2, Mei 2015.
- [4] I Gede Pantja Astawa dan Suprin Na'a, 2012, Dinamika Hukum dan Ilmu Perundang-undangan di Indonesia, PT. Alumni, Bandung.
- [5] Jimly Asshiddiqie, Sengketa Kewenangan Konstitusional Lembaga Negara, Konstitusi Press, Jakarta, 2006.
- [6] Ketetapan MPRS No. I/MPRS/1960 tentang Manifesto Politik Republik Indonesia sebagai Garis-Garis Besar daripada Haluan Negara.
- [7] Ketetapan MPRS Nomor XX/MPRS/1966 tentang Memorandum DPR-GR mengenai Sumber Tertib Hukum Republik Indonesia.
- [8] Ketetapan MPR No. IV/MPR/1973 tentang Garis-garis Besar Haluan Negara.
- [9] Ketetapan MPR No. IV/MPR/ 1978 tentang Garis-garis Besar Haluan Negara.
- [10] Ketetapan MPR No. II/MPR/1983 tentang Garis-garis Besar Haluan Negara.
- [11] Ketetapan MPR No. II/MPR/1988 tentang Garis-garis Besar Haluan Negara.
- [12] Ketetapan MPR No. II/MPR/1993 tentang Garis-garis Besar Haluan Negara.
- [13] Ketetapan MPR No. II/MPR/1998 tentang Garis-garis Besar Haluan Negara.
- [14] Ketetapan MPR No. IV/MPR/1999 tentang Garis-Garis Besar Haluan Negara Tahun 1999-2004.
- [15] Lutfil Ansori, 2019, Haluan Negara Sebagai Pedoman Kebijakan Dasar Negara Dalam Sistem Ketatanegaraan Indonesia: Sebuah Tinjauan Filsafat Kenegaraan, *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol. 16, No.1, Juni 2019.
- [16] M. Erwin, *Filsafat Hukum*, Raja Grafindo, Jakarta, 2011.
- [17] Ni Ketut Sri Utari, Garis-Garis Besar Haluan Negara Dalam Struktur Hukum di Indonesia, <https://simdos.unud.ac.id>, hlm. 11, diakses tanggal 13 Agustus 2020.
- [18] Setiadi, Wicipto, 2007, Proses Pengharmonisasian Sebagai Upaya untuk Memperbaiki Kualitas Perundang-undangan, *Jurnal legislasi Indonesia*, Vol.4 No.2, Juni,2007.
- [19] Tanti Kirana Utami, 2013, Peran Serikat Pekerja Dalam Penyelesaian Perselisihan Pemutusan Hubungan Kerja, *Jurnal Wawasan Hukum*, Vol. 28, No.1.
- [20] Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945 sebelum Amandemen dan setelah Amandemen.
- [21] Undang-Undang Nomor 17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional 2005-2025, Lembaran Negara Republik Indonesia Tahun 2007 Nomor 33 dan Tambahan Lembaran Negara Republik Indonesia Nomor 4700.

- [22] Undang-Undang Nomor 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 104 dan Tambahan Lembaran Negara Republik Indonesia Nomor 4421.
- [23] Undang-Undang Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-undangan, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 53, Tambahan Lembaran Negara Republik Indonesia Nomor 4389;
- [24] Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan sebagaimana diubah dengan UU No. 15 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- [25] Widayati, Absori, & Aidul Fitriciada Azhari , 2014, Rekonstruksi Kedudukan Ketetapan MPR dalam sistem Ketatanegaraan Indonesia, Jurnal Media Hukum, Vol. 21 No.2 Desember 2014.