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Regulatory Harmonization of Academic Freedom Provisions in the National Education System

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Abstract. This research examines the inconsistencies in the provisions of Article 24 of Law Number 20 of 2003 on the National Education System and the implementation of Government Regulation Number 57 of 2021 concerning academic freedom and higher education autonomy. Despite the legal framework's intent to promote academic freedom and autonomy, the absence of references to Article 24 in the preamble of the regulation creates disharmony, leading to legal uncertainty and confusion. The research aims to assess the legal impact of these inconsistencies on Indonesia's national education policies and practices. Using a normative legal methodology, the study employs a legislative approach and analyzes the legal hierarchy to evaluate the alignment of laws and regulations. The analysis reveals that the failure to include Article 24 in the considerations of Government Regulation Number 57/2021 violates the principle of legal hierarchy and undermines the effectiveness of the law. This disharmony results in legal confusion, inconsistent law enforcement, inefficiency in policy implementation, and a potential decline in the quality of education. The study suggests several solutions, including judicial review, revision of laws, and improved harmonization strategies.

Keywords: Legal Disharmony, National Education System, Academic Freedom, Regulatory Harmonization, Legal Norms

Abstrak. *Penelitian ini mengkaji ketidakkonsistenan ketentuan Pasal 24 Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional dan pelaksanaan Peraturan Pemerintah Nomor 57 Tahun 2021 tentang kemerdekaan akademik dan otonomi pendidikan tinggi. Meskipun kerangka hukum dimaksudkan untuk mempromosikan kebebasan dan otonomi akademik, tidak adanya referensi terhadap Pasal 24 dalam pembukaan peraturan tersebut menciptakan ketidakharmonisan, yang mengarah pada ketidakpastian dan kebingungan hukum. Penelitian ini bertujuan untuk menilai dampak hukum dari ketidakkonsistenan ini terhadap kebijakan dan praktik pendidikan nasional Indonesia. Dengan menggunakan metodologi hukum normatif, penelitian ini menggunakan pendekatan legislatif dan menganalisis hierarki hukum untuk mengevaluasi keselarasan peraturan perundang-undangan. Analisis tersebut mengungkapkan bahwa kegagalan untuk memasukkan Pasal 24 dalam pertimbangan Peraturan Pemerintah Nomor 57/2021 melanggar prinsip hierarki hukum dan merusak efektivitas hukum. Ketidakharmonisan ini mengakibatkan kebingungan hukum, penegakan hukum yang tidak konsisten, inefisiensi dalam implementasi kebijakan, dan potensi penurunan kualitas pendidikan. Studi ini menyarankan beberapa solusi, termasuk peninjauan kembali, revisi undang-undang, dan peningkatan strategi harmonisasi.*

Kata Kunci: *Ketidakharmonisan Hukum, Sistem Pendidikan Nasional, Kebebasan Akademik, Harmonisasi Regulasi, Norma Hukum*

1. Introduction

In the enactment of Indonesian law, caution in legal legislation essentially begins with the term 'consideration.' The introductory section of a law provides a brief overview of the key concepts underlying the rationale for enacting that law. When the considerations encompass multiple key ideas, each thought is articulated through a series of phrases that collectively form a cohesive unit of understanding. [1] In examining laws, whether at the provincial or municipal level, there are philosophical, social, and legal aspects that underlie their formulation.[2] The writing is hierarchical, from the most fundamental to the most essential.[3]

Incorporating philosophical considerations indicates that the rules are based on a thorough examination of relevant factors, such as the spiritual climate and the philosophy of Indonesia, which are rooted in Pancasila and the 1945 Constitution.[4] From a sociological perspective, regulations are established to address various societal demands.[5] The legal aspect provides an overview of the regulations set to resolve issues or rectify legal deficiencies. This is done by taking into account existing laws and regulations that have been amended or revoked in order to provide legal clarity and a sense of public justice.[6] These three elements can be

[1] Hassan Suryono, *Hukum kenegaraan dan perundang-undangan: perspektif sosiologis-normatif dalam teori dan praktik*, (Surakarta: UNS Press, 2005), 93.

[2] Abdul Ghofur, Sulistiyono Susilo, "Maslaha as the philosophical, political, and legal basis on the Islamic banking legislation in Indonesia," *Global Journal Al Thaqafah* 7, no. 1 (2017): 10.

[3] Maria Farida Indrati, *Ilmu Perundang-Undangan,* (Yogyakarta: Kanisus, 2011), 108

[4] Nurrohman Syarif, Zulbaidah, and Muhammad Andi Septiadi, "Political theology: how God's law is applied in the context of Indonesian democracy based on Pancasila," *Cogent Arts & Humanities* 11, no. 1 (2024): 2407104; Boyke Hadi Muharram Syamsudin, Huala Adolf, Amiruddin A. Dajaan Imami, and Dadang Epi Sukarsa, "The Development of Regulation Systems for the Management of Coastal Areas in Indonesia's Tourism," *Lex Localis: Journal of Local Self-Government* 21, no. 4 (2023); Asmah Asmah, Azizah Azizah, Retno Sari Dewi, and Ruetaitip Chansrakaeo, "Pancasila's Economic Existence in Business Development: The Efforts to Realize Justice in Business Law," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 2 (2023): 277; Nadiyah Meyliana Putri, Mutia Azizah Aksan, Radhitya Pratama, Angel Maris Linda, and Ridwan Arifin, "Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?," *Journal of Law and Legal Reform* 4, no. 4 (2023); Andriawan, Wawan. "Pancasila perspective on the development of legal philosophy: Relation of justice and progressive law." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2022): 1-11.

[5] Amanda Coffey, *Reconceptualizing Social Policy: Sociological perspectives on Contemporary Social Policy: Sociological Perspectvies on Contemporary Social Policy*, (New York: McGraw-Hill Education, 2004); Niklas Luhmann, *A sociological theory of law*, (London: Routledge, 2013); Ioannis Kampourakis, "Empiricism, Constructivism, and Grand Theory in Sociological Approaches to Law: The Case of Transnational Private Regulation," *German Law Journal* 21, no. 7 (2020): 1418.

[6] Maria Farida Indrati, *Ilmu Perundang-Undangan,* 109.

seen through the formulation of Law Number 20 of 2003 on the National Education System. In the 'considerations' section, paragraph a presents the philosophical element, paragraph b the sociological element, and paragraphs c, d, and e the legal elements. Every individual has the right to receive an education. To this end, the government strives to establish and coordinate a national education system to enhance the intellectual capacity of the nation, which is then reflected in the laws and regulations. Based on this, Law Number 20 of 2003 on the National Education System was enacted.

The administration of higher education activities is regulated with autonomy, as outlined in Article 24, paragraphs (1) to (4) of Law Number 20 of 2003.[7] Paragraph (4) of Article 24 mandates that the administration of higher education is governed by government regulations. Nevertheless, its independence must still adhere to Law Number 20 of 2003.[8] On the other hand, there is pressure from the higher education sector, which asserts that optimal development cannot be achieved without granting authority and autonomy in both academic and non-academic administration, as these two elements support each other.[9] Therefore, higher education institutions are seen as having greater potential to enhance their competitiveness.[10] This has led to the establishment of Law Number 12 of 2012

[7] Paulina Pannen, Aman Wirakartakusumah, and Hadi Subhan, "Autonomous higher education institutions in Indonesia: Challenges and potentials," *The governance and management of universities in Asia* (2019): 70; Vivi Indra Amelia Nasution, Eko Prasojo, Lina Miftahul Jannah, and Gonda Yumitro, "Governance of autonomous higher education institution toward world-class university: A case study at the universitas Indonesia," *Governance* 7, no. 10 (2020): 2020; Chiara Logli, "Higher education in Indonesia: Contemporary challenges in governance, access, and quality," *The Palgrave handbook of Asia Pacific higher education* (2016): 569.

[8] Carolina Magdalena Lasambouw, "Analisis Kebijakan Tentang Otonomi Perguruan Tinggi Dalam Bentuk Badan Hukum Pendidikan (Policy Analysis on Higher Education Autonomy Through Education Law Entity)," *Jurnal Hukum Sigma-Mu* 5, no. 2 (2016): 39.

[9] Nurdiana Gaus, "Indonesian Higher Education: Issues in Institutional and Individual Capacities" In *Higher Education in Southeast Asia*, Emerald Publishing Limited, 2024; Idi Jahidi, Desi Indrawati, Gandara Permana, and Iwan Setiawan, "Governance Model for Higher Education in Indonesia Post-Pandemic of Covid-19 Towards a New Normal Era," *Journal of Higher Education Theory and Practice* 23, no. 6 (2023); S. Sibawaihi, and Fernandes, V, "Globalizing Higher Education Through Internationalization and Multiculturalism: The Case of Indonesia," *Higher Education Quarterly* 77, no. 2 (2023): 243; Rosser, Andrew, "Neo-liberalism and the politics of higher education policy in Indonesia," *Comparative education* 52, no. 2 (2016): 123.

[10] Umi Nuraini, Sheerad Sahid, and Muhammad Hussin, "Factors affecting K-economy readiness: a study in higher education," *Millenium-Journal of Education, Technologies, and Health* 24 (2024): e34723-e34723; Erma Fatmawati, Babun Suharto, Shoni Rahmatullah Amrozi, Wildan Khisbullah Suhma, Agus Yudiawan, Mukhamad Ilyasin, and Fihris Maulidiah Suhma, "Change management towards good university governance in Indonesia: study at Islamic religious universities based on BLU mandate," *Cogent Social Sciences* 10, no. 1 (2024): 2333084.; Sylvia Rozza Rizard, Bambang Waluyo, and Irwandi Jaswir, "Impact of brand equity and service quality on the reputation of universities and students' intention to choose them: The case of IIUM and

on Higher Education, followed by the enactment of Government Regulation Number 4 of 2014 on the Implementation of Higher Education and the Management of Higher Education Institutions.

Law Number 12 of 2012 was introduced amid significant controversy, having previously been subjected to intense criticism during the material judicial review process at the Constitutional Court in Case Number 103, 111/PUU-X/2012. It was seen as a new repetition of Law Number 9 of 2009, which was later annulled due to the establishment of a legal entity for higher education institutions, leading to the total commodification of education.[11] University autonomy refers to full autonomy in the administration of higher education, including academic and non-academic freedom enjoyed by universities, free from interference by society, the private sector, or the government.[12] Higher education institutions must remain autonomous from political and economic influences.[13]

The administration of higher education, which may also be carried out by other ministries or is commonly referred to as Higher Education by Ministries/Agencies and Non-Ministerial Government Institutions, must still be based on the higher education policies set by the Ministry of Education, as stipulated in Government Regulation Number 57 of 2022 on the Administration of Higher Education by Other Ministries and Non-Ministerial Government Institutions. This aligns with the provisions of Government Regulation Number 4 of 2014 on the Administration of Higher Education and the Management of Higher Education Institutions, which states that the ultimate responsibility for higher education administration remains under the jurisdiction, duties, and authority of the Ministry of Education. This demonstrates that while Indonesia is a unitary state, universities within it enjoy considerable autonomy in setting their own academic and non-academic policies and deciding how to implement them.

UIN," *F1000Research* 11 (2023): 1412; Badri Munir Sukoco, Rizky Ananda Putra, Humam Nur Muqaffi, Muhammad Vinka Lutfian, and Hendro Wicaksono, "Comparative study of ASEAN research productivity," *Sage Open* 13, no. 1 (2023): 21582440221145157; Sri Mulyani Indrawati, and Ari Kuncoro, "Improving competitiveness through vocational and higher education: Indonesia's vision for human capital development in 2019–2024," *Bulletin of Indonesian Economic Studies* 57, no. 1 (2021): 33.

[11] Anne Sarvitri, "Otonomi Pendidikan Tinggi Dan Pembiayaannya: Antar Kemajuan Dan Komersialisasi Pendidikan (Tinjauan terhadap UU No.12 Tahun 2012 tentang Pendidikan Tinggi)," *Judika (Jurnal Pendidikan Unsika)* 8, No. 1, (2019): 27.

[12]Carolina Magdalena Lasambouw, "Analisis Kebijakan Tentang Otonomi Perguruan Tinggi Dalam Bentuk Badan Hukum Pendidikan (Policy Analysis on Higher Education Autonomy Through Education Law Entity)," *Jurnal Hukum Sigma-Mu* 5, no. 2 (2016): 28.

[13] Adam Adam, and Muryanto Lanontji, "Kebijakan otonomi perguruan tinggi sebagai dampak reformasi keuangan dalam bidang pendidikan di Indonesia," *Journal of Education and Teaching (JET)* 2, no. 1 (2021): 60.

Article 24 of Law Number 20 of 2003 states that: (1) Academic freedom, freedom of academic expression, and scientific autonomy are essential components for the advancement of knowledge in higher education; (2) Higher education institutions are free to organize their own institutions as centers for research, community service, and higher education; (3) Higher education institutions may receive funds from the community, managed in accordance with the principle of public accountability; (4) Government regulations further govern the administration of higher education as outlined in paragraphs (1), (2), and (3) of Law on National Education System.

This research is considered new because it specifically examines the considerations presented in the provisions of Article 24 regarding academic freedom of Law Number 20 of 2003 through a legal analysis of the inconsistencies in these considerations.[14] The aim is to assess the legal impact on policies and practices in national education, in order to advance education. This is achieved by ensuring adherence to legal principles and the success of the national education program in Indonesia. Previous research has not specifically addressed this topic.

Government Regulation Number 57 of 2021 on National Education Standards, in the implementation provisions of Article 24 of the National Education System Law regarding academic freedom, does not include the articles from the law that mandate it in the preamble. As a result, disharmony occurs. The application of laws and regulations that are not aligned creates legal confusion. Both the content and the spirit of the legal rules are violated by this. Based on this clause, there is a legal need to clearly state that it is the government regulation, and not the law, that will govern the administration and implementation of higher education.[15]

2. Method

This research uses a normative legal methodology. This method essentially views law as a system of norms that addresses principles, norms, government regulations, court rulings, and agreements. Additionally, doctrine, which can be defined as the study of various types of formal legal norms, including laws, is also

[14] Satria Unggul Wicaksana Prakasa, "Paradigm of Law and Human Rights as a Protection of Academic Freedom in Indonesia," *Human Rights in the Global South (HRGS)* 2, no. 1 (2023): 42; Sholahuddin Al-Fatih, Zaka Firma Aditya, Abdul Basid Fuadi, and Muhammad Nur. "Academic Freedom of Expression in Indonesia: A Maqashid Sharia Notes." *El-Mashlahah* 13, no. 2 (2023): 211.

[15] Simon Butt, *Corruption and law in Indonesia*, (London: Routledge, 2017), 212.

considered. [16] The legislative approach is an initial method that involves examining all government regulations related to the legal issues being studied. By considering the implementation provisions of Article 24 of Law Number 20 of 2003, this method seeks to understand the alignment and consistency of relevant regulations to conduct a legal analysis. The study analyzes data using the layered legal theory,[17] or the concept of the ideal hierarchy of regulations, theoretically relating to the juridical analysis of the considerations in the implementation provisions of Article 24 of Law Number 20 of 2003. The primary legal sources are official legal documents, including court rulings and legislative regulations that signify their legal authority.

3. Result and Discussion

3.1 Legislation and Legal Norms: Ensuring Legal Certainty and Avoiding Disharmony

In terms of the definition of regulations, legal experts explain that legislation has the following meanings: First, it refers to any official or authoritative decision that contains standards of behavior that are public in nature or legally binding in writing. Second, it is a standard of behavior that outlines responsibilities, roles, positions, and authorities. Third, it refers to rules that are vague or not aimed at specific objects, events, or phenomena; in other words, these rules lack specificity.[18] In terms of the scope of applicability of a law, the determination of the effective date of a law is distinct from the date of its enactment. This distinction allows for the preparation of infrastructure and facilities, as well as the mechanisms for enforcing the rules and regulations. Therefore, in the absence of specific provisions that determine the commencement of a law, the law becomes mandatory for the public from the day it is promulgated.[19] This ensures that the legal framework operates effectively and uniformly, avoiding confusion about the start of enforcement.

In this context, legal norms must exist in legislation. The term 'norm' in the Indonesian Dictionary is defined as a rule that is mandatory for all or some members of society; a standard regulation or criterion for assessment. One classification of norms is legal norms. Specific individuals, groups, entities, as well

[16] Soerjono Soekanto, "*Penelitian Hukum Normatif: Suatu Tinjauan Singkat*," (Jakarta: Raja Grafindo Persada, 2007), 211.

[17] Hans Kelsen, *General theory of law and state*, (London: Routledge, 2017), 145.

[18] Indrati, Maria Farida. *Ilmu Perundang-Undangan,* 309.

[19] Jimly Asshiddiqie, *Format kelembagaan Negara dan Pergeseran kekuasaan dalam UUD 1945*, (Yogyakarta: FH UI Press, 2005), 310.

as certain events and situations, are the intended recipients of concrete and adapted legal standards.

Upon examining the structure and substance of legal standards, some have argued that there are various types, including: (a) General and individual legal norms; these are legal norms that address actions without specific limitations or boundaries. An individual, a group of people, or even a large number of people may be the subject of individual legal rules.[20] (b) Concrete and abstract legal norms, where concrete legal norms refer to rules that examine an individual's behavior but lack specific limits because they are abstract in nature; (c) Continuous and final legal norms, which are norms whose validity is not bound by time, allowing them to be applied at any moment without cessation; (d) Individual and paired legal norms, which are autonomous legal regulations whose existence does not depend on other legal norms.[21]

A legal norm is a rule within the legal system that provides intrinsic normative reasons for action, often closely linked with moral norms and grounded in normative principles, purposes, or values. These legal norms play a crucial role in legislation, as they are designed to achieve legal objectives, particularly by fostering a strong commitment from both the state apparatus and citizens toward the national goal of promoting the welfare and happiness of the people.[22] This makes it crucial to integrate laws and regulations. The primary goal of this integration is to prevent conflicts between laws, which could lead to legal ambiguities.[23] By considering relevant legal concepts and the framework of the hierarchy of laws and regulations, several harmonization approaches can be employed. Vertical hierarchy refers to a set of laws and regulations that apply in contrast to those at a different hierarchical level. Horizontal harmonization, on the other hand, refers to the process of aligning laws and regulations with those of equal status and hierarchy.

Furthermore, clear legislation is crucial for ensuring legal certainty, guaranteeing that the law functions effectively as a binding and enforceable rule.[24] Legal certainty is defined as the assurance that the law must be implemented effectively.[25] To achieve this, government initiatives are necessary to regulate the

[20] Stefan Magen, "Philosophy of Law," *International Encyclopedia of the Social & Behavioral Sciences* 18 (2015): 26.

[21] Maria Farida Indrati, *Ilmu Perundang-Undangan,* 55

[22] Stefan Magen, "Philosophy of Law," 29.

[23] Leonard Hoeft, Michael Kurschilgen, and Wladislaw Mill, "Norms as obligations," *International Review of Law and Economics* 81 (2025): 106235.

[24] H. Herri Swantoro, and MH SH, *Harmonisasi keadilan dan kepastian dalam peninjauan Kembali*, (Depok: Kencana, 2017), 19.

[25] Sri Wahyuni, Irene Mariane, Galih Bagas Soesilo, Astri Dwi Andriani, Listyowati Sumanto, Wahyu Ramadhani, Rian Sacipto, *Pengantar Ilmu Hukum*, (Makassar: Tohar Media, 2022), 134.

law through legislation and regulations, ensuring that these rules align with the legal framework, which in turn guarantees compliance with the law as a binding obligation.[26]

However, disharmony often occurs, resulting in inconsistencies and lack of alignment. Several factors contribute to legal disharmony, such as the proliferation of institutions issuing regulations, frequent changes in regulatory officials, the absence of standardized formulation systems binding all institutions with regulatory authority, and the lack of public participation in the regulation-making process, leading to conflicting implementations. To address disharmony, there are three approaches to prevent and resolve it in regulations, such as by (a) modifying or removing certain parts that are inconsistent with the applicable regulations, or other relevant sections of the regulation by the authorized body; (b) submitting a request for judicial review to the appropriate judicial body; (c) applying the accompanying legal principles: *lex superior derogat legi inferiori* (a law enacted by a higher-level government takes precedence over one enacted by a lower-level government), *lex specialis derogat legi generalis* (a specific law supersedes a general one), and *lex posterior derogat legi priori* (a later law overrides an earlier law).[27]

More specifically, in the enactment of laws, especially the provisions for implementing the articles within the legislation, they must ensure legal certainty, as Ebbesson stated that legal certainty is a fundamental virtue of law.[28] The realization of this legal certainty is demonstrated through the presence of related legal rules and law making, which are then comprehensively followed, reflecting the existence of harmonization.[29] This, in turn, shows that the law is being implemented effectively and in accordance with legal principles.

3.2. Legal Disharmony in Regulating Academic Freedom

In a legal system, conflicting norms present a significant challenge that can hinder the effectiveness of the law and create confusion in its implementation. A

[26] Nurul Qamar, and Farah Syah Rezah, *Ilmu dan Teknik Pembentukan Peraturan Perundang-Undangan*, (Makassar: CV. Social Politic Genius (SIGn), 2020), 16.

[27] Erlan Wijatmoko, Armaidy Armawi, and Teuku Faisal Fathani, "Legal effectiveness in promoting development policies: A case study of North Aceh Indonesia," *Heliyon* 9, no. 11 (2023): 142; Jonas Barklund, and Andreas Hamfelt, "Hierarchical representation of legal knowledge with metaprogramming in logic," *The Journal of logic Programming* 18, no. 1 (1994): 75

[28] Jonas Ebbesson, "The rule of law in governance of complex socio-ecological changes," *Global Environmental Change* 20, no. 3 (2010): 418; Stefano Bertea, "Towards a new paradigm of legal certainty," *Legisprudence* 2, no. 1 (2008): 35.

[29] Jérémie Van Meerbeeck, "The principle of legal certainty in the case law of the European court of justice: from certainty to trust," *European Law Review* 41, no. 2 (2016): 280; Patricia Popelier, "Five paradoxes on legal certainty and the lawmaker," *Legisprudence* 2, no. 1 (2008): 60; Elina Paunio, "Beyond predictability–reflections on legal certainty and the discourse theory of law in the EU legal order," *German Law Journal* 10, no. 11 (2009): 1483.

norm conflict arises when two or more legal regulations are not aligned, either due to differences in substance, overlapping provisions, or discrepancies within the hierarchy of regulations. Such conflicts pose a risk to legal certainty and may violate fundamental principles of legal drafting, such as *lex superior derogat legi inferiori* (the higher law overrides the lower law) and *lex specialis derogat legi generali* (the more specific law overrides the general law).[30]

The absence of the implementation provisions of Article 24 of Law Number 20 of 2003 in the considerations of Government Regulation Number 57 of 2021 highlights a disharmony in the formation of regulations. According to Appendix to Law Number 12 of 2011 concerning the Formation of Legislation, Article 24 mandates that the preamble of a government regulation must include a brief explanation outlining the necessity of enforcing the provisions of the Law. One or more provisions of the Law must explicitly require the formulation of a Government Regulation, specifically citing one or several articles of the Law that necessitate its creation. Below is an explanation of Article 24:[31]

Article (1): In the implementation of education and the development of science, academic freedom, freedom of academic speech, and scientific autonomy apply to higher education institutions.

Article (2): Higher education institutions have the autonomy to manage their own institutions as centers for higher education, scientific research, and community service.

Article (3): Higher education institutions may obtain funding from the community, with the management of such funds being carried out based on the principle of public accountability.

Article (4): Provisions regarding the implementation of higher education, as referred to in paragraphs (1), (2), and (3), shall be further regulated by government regulations.

The existing inconsistencies have significant implications for the implementation and understanding of the legal norms contained in Article 24. This article represents a specific legal norm directed at a particular group, particularly higher education institutions as the providers of education. It is argued that legal norms can be categorized based on their form and nature, including universal and individual norms, as well as abstract and concrete norms.[32] In this context, Article

[30] I. Maarif, "Dinamika Kedudukan Peraturan Lembaga dalam Hierarki Perundang-Undangan: Tinjauan Yuridis dan Perspektif Praktis," *UNNES Law Review* 7, no. 1 (2024): 339; Erlan Wijatmoko, Armaidy Armawi, and Teuku Faisal Fathani, "Legal effectiveness in promoting development policies: A case study of North Aceh Indonesia," *Heliyon* 9, no. 11 (2023): 141.

[31] Yuni Priskila Ginting, "Perspektif Pluralisme Hukum Pasca Pembentukan Undang Undang Cipta Kerja," *Majalah Hukum Nasional* 51, no. 1 (2021): 66.

[32] Maria Farida Indrati, *Ilmu Perundang-Undangan,* 102.

24 falls into the category of general and abstract legal norms. This classification arises from the fact that it is specifically directed at higher education institutions, with an undefined subject and encompassing abstract situations in the provision of higher education. There must be absolute clarity regarding the legal intent when deciding how to apply its provisions. The presence of interrelated legal rules, which are collectively followed to ensure alignment, demonstrates the achievement of legal certainty. This indicates that the law is being applied effectively.

Article 24 is classified as a legal norm with characteristics of being both general and abstract. This norm is directed at an undefined group of people, parties, or legal subjects, and is related to events and circumstances that are limitless in scope. Consequently, Article 24 of this law serves to provide guidelines and specific provisions related to the administration of education, thereby ensuring the implementation of rights and obligations in accordance with the relevant context within Indonesia's education system.

The issue of disharmony in the implementation provisions of Article 24 of Law Number 20 of 2003, as outlined in Government Regulation Number 57 of 2021, indicates that the principle of *lex specialis derogat legi generalis* cannot be applied. This principle should prioritize specific regulations over general ones.[33] The Government Regulation is, in fact, a specific regulation, while Law Number 20 of 2003 is a general one. The law cannot be disregarded in favor of prioritizing Government Regulation Number 57 of 2021. This is due to the different hierarchical levels of the two types of regulations. Moreover, Law Number 20 of 2003 serves as the primary law, which mandates the creation of subordinate regulations, such as the Government Regulation, to serve as its implementation provisions. Therefore, the higher-level law holds stronger validity.

The lack of clarity in the considerations of Government Regulation Number 57/2021, which fails to include references to Article 24 of Law Number 20/2003, poses the potential risk of creating doubt and confusion in its implementation. Higher education institutions may struggle to comprehend their autonomy and academic freedom if these provisions are not linked to the relevant stipulations of Law Number 20/2003.[34] Furthermore, neglecting this provision could hinder efforts to achieve quality and equitable educational goals as mandated by the law. Therefore, improvements in the formulation process of the regulatory framework are necessary, particularly in ensuring that the considerations are comprehensive and clear, thus facilitating the harmonization between Law Number 20/2003 and Government Regulation Number 57/2021. This would ensure that regulations

[33] Mastorat, *Pengantar Ilmu Perundang-Undangan*, (Surabaya: Scopindo Media Pustaka, 2021), 59.

[34] Amir Firmansyah, Aris Machmud, and Suparji Suparji, "Peran BUMN sebagai Pilar Utama Ekonomi Nasional yang Mandiri: Sebuah Kajian Hukum Korporasi," *Binamulia Hukum* 13, no. 2 (2024): 523.

regarding higher education are effectively implemented in alignment with established principles.

Fundamental disharmony inevitably has a negative impact on the functioning of the state.[35] The disharmony between the implementing provisions of Article 24 of Law Number 20 of 2003 and Government Regulation Number 57 of 2021 has significant adverse effects on the education system in Indonesia, particularly concerning the management of higher education. The detrimental consequences of this disharmony include, first, legal uncertainty. Disharmony in regulations leads to conflicting or overlapping rules, which can create uncertainty for academic communities and the public. This uncertainty can disrupt decision-making processes and the effective implementation of higher education.

Second, inconsistent law enforcement can arise from regulatory disharmony, leading to conflicting interpretations and enforcement of laws. This inconsistency causes confusion and inequities, with law enforcement agencies applying different rules in similar situations, resulting in unfair treatment and divergent outcomes. Third, inefficiency in government occurs when regulations are not aligned, making it difficult to formulate effective policies. This misalignment hinders the implementation of programs and impedes the achievement of development objectives, particularly within the education sector.

Fourth, an increase in litigation burden occurs when regulatory disharmony causes confusion or discrepancies between regulations. This leads to a rise in legal disputes, lengthening litigation processes and overburdening courts and other legal resources. Fifth, public distrust arises when disharmony causes citizens to perceive that regulations are often contradictory or unevenly enforced. This perception undermines public confidence in both the legal system and the government, which in the long run weakens the legitimacy of the law in the eyes of society. Lastly, policy quality may decline when conflicting regulations result in ineffective or even counterproductive policies. Specifically, when disharmony affects regulations on higher education, it obstructs the effective administration of higher education itself.

The negative impacts resulting from disharmony underscore the urgent need for harmonization in the process of formulating laws and regulations. Harmonization refers to the alignment of content and procedures in drafting proposed regulations, ensuring that they produce cohesive and integrated rules within the national legal system. The harmonization of regulations is closely related to the hierarchy of legal provisions.

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[35] Nur Kemala Putri, Alex Simeulu, Fikriya Aniqa Fitri, Irda Trilia, and M. Febryan Adisma, "Disharmonisasi Peraturan Perundang-Undangan di Indonesia Antara Bentuk Penyebab dan Solusi," *Wathan: Jurnal Ilmu Sosial dan Humaniora* 1, no. 1 (2024): 58.

The harmonization of legislation aims to establish coherent standards across the legal framework. The importance of harmonization among norms, especially legal standards, is a rational outcome necessary for maintaining order within a nation's legal system. If hierarchical laws are not aligned, the significance of the hierarchy is inevitably lost.[36] Harmonization thus becomes an obligation for those involved in drafting regulations, as outlined in Article 3, Paragraph (2) of Government Regulation Number 59 of 2015 regarding the Participation of Lawmakers in the Formation and Supervision of Legislation. The purpose of regulatory alignment is to establish coherent standards throughout the legal framework. The importance of aligning norms, particularly legal standards, is a rational necessity for building order within the national legal system. If the hierarchy of regulations is not consistent, the significance of such hierarchy is fundamentally diminished.[37]

3.3. Harmonization Strategies to Address Legal Disharmony in Higher Education Regulatory Frameworks

One of the steps for harmonizing as a solution to the issue of regulatory disharmony is through judicial review. Judicial review is the examination of legislation through the judicial body, which can be in the form of both material and formal testing. Material testing assesses the substance of the regulation, while formal testing evaluates the structure of the regulation.[38]

The disharmony between the National Education System Law (UU Sisdiknas) Number 20 of 2003 and Government Regulation Number 57 of 2021 indicates that there are laws and regulations beneath the law that require testing. This review is within the jurisdiction of the Supreme Court of the Republic of Indonesia, in accordance with Article 24A Paragraph (2) of the Constitution. An individual can file a petition for judicial review to the Supreme Court (MA) by submitting a petition or objection questioning the legality of a law that is alleged to be in conflict with another law. The MA will examine the case and decide whether to grant or reject the petition based on its assessment of its validity. On the other hand, the Supreme Court will reject the petition if it finds that the petition lacks legal grounds. If a law is deemed invalid, it loses its legal power and influence.

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[36] Bimo Tresnadipangga, Fokky Fuad, and Suartini Suartini, "Harmonisasi Peraturan Perundang-Undangan dalam Pelaksanaan Bantuan Sosial di Republik Indonesia," *Binamulia Hukum* 12, no. 1 (2023): 216.

[37] Sasmita Ahmad Isan, and Abraham Ferry Rosando, "Sistem Pemutusan Hubungan Kerja Pasca Berlakunya Undang-Undang Cipta Kerja," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 872.

[38] Riastri Haryani, "Konsepsi dan Sistem Pengujian Peraturan Perundang-Undangan oleh Mahkamah Agung Berdasarkan Undang-Undang Dasar 1945," *Binamulia Hukum* 6, no. 2 (2017): 120.

The second strategy is the revision of laws, where the primary consideration is its consistent application. Redrafting the revision of laws due to disharmony is a crucial step to rectify discrepancies or conflicts between the prevailing regulations within the legal system of a country. Additionally, identifying the issues is necessary. The regulations considered disharmonious should be reviewed through academic studies, expert input, and public consultations. Another step is harmonization, which involves an in-depth analysis of conflicting regulations. The goal is to create alignment among these regulations so that no discrepancies remain. After harmonization, the regulations deemed necessary for revision will be restructured according to clearer provisions that eliminate any potential for multiple interpretations.

Another effort is the enactment. The draft revision of the regulation is then submitted to the legislative or executive body for approval, transforming it into a new rule that replaces the old, disharmonious regulation. Finally, the new regulation must undergo socialization and implementation. Once enacted, the new rule should be disseminated to the public and law enforcement officers to ensure its proper application and alignment with the objectives of the revision. This revision is crucial for maintaining legal certainty, ensuring the coherence of the regulatory system, and ensuring that the law remains relevant to the evolving times and the needs of society.

Referring to the hierarchy of regulations in Indonesia, there is a principle that every regulation must align with and not contradict higher-level regulations.[39] Law Number 20 of 2003 serves as a higher legal foundation compared to the government regulation (PP) that governs it.[40] To achieve vertical harmonization, it is necessary to ensure that all government regulations created as derivatives of Law Number 20 of 2003 refer to the relevant provisions of the law, including Article 24. The analysis conducted by the author on Government Regulation Number 57 of 2021 reveals that it does not include considerations that align with Article 24, thus creating a potential for disharmony. This issue can be resolved by revising the relevant regulations so that the government regulation reflects and supports the provisions of Law Number 20 of 2003, including academic freedom and the autonomy of higher education institutions.[41]

On the other hand, horizontal harmonization is also important within the context of regulations that fall within the same hierarchy. This means that

[39]H. Herri Swantoro, and MH SH, *Harmonisasi keadilan dan kepastian dalam peninjauan Kembali*, 32.

[40] Afri Eki Rizal, and Arman Husni, "Dasar-Dasar Pemikiran Dalam Islam," *Innovative: Journal of Social Science Research* 3, no. 3 (2023): 4497.

[41] Hendra Kurnia Putra, Sudarsono Sudarsono, Istislam Istislam, and Aan Eko Widiarto, "Legal Implications of Regulating Ministerial Regulation in Indonesia's Regulatory System," *Journal of Arts and Humanities* 9, no. 6 (2020): 20.

regulations issued in the field of education should complement each other and not be in conflict.[42] For example, if there are other regulations that govern higher education administration, the norms in Article 24 of Law Number 20 of 2003 should be accepted and accommodated within these regulations. Therefore, to achieve horizontal harmonization, collaboration among various ministries and relevant institutions is necessary when drafting regulations related to education. By fostering constructive dialogue and discussions, all parties can ensure that the policies adopted support one another and do not lead to conflicts, thus achieving the common goal of improving the quality of education.[43]

The presence of judicial review and the revision of regulations serves as an effort to achieve legal certainty. This aligns with the theory presented by Jan Michiel Otto, who stated that legal certainty is essentially realized through clear, transparent, and consistent legal rules.[44] Other solutions that can be implemented to achieve harmonization in the formation of legislation in Indonesia include improving coordination between institutions. Legislative bodies, such as the House of Representatives, the government (especially the Ministry of Law), and other related institutions, need to enhance coordination and communication. This will reduce the potential for conflicts between regulations.

Another solution is alignment with the hierarchy of regulations. All regulations must be aligned with other regulations that have a higher hierarchy. A proper understanding and implementation of the regulatory hierarchy will help avoid legal conflicts. In the case of regulations related to higher education, Government Regulation Number 57 of 2021 should not include provisions on the management of higher education.[45] Instead, it should only regulate education in general to align with the provisions of Law Number 20 of 2003. Meanwhile, regulations specifically related to the management of higher education should be separately regulated under Law Number 12 of 2012 and Government Regulation Number 4 of 2014. This ensures proper hierarchical alignment.[46]

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[42] Hukumonline.com, "*Akademisi Ini Usul Dua Mekanisme dalam Revisi UU Pembentukan Peraturan Perundangan,*" (2022), Avaible at: https://www.hukumonline.com/berita/a/dua-mekanisme-revisi-uu-pembentukan-peraturan-perundangan-lt624273e0b2173/.

[43] H. Herri Swantoro, and MH SH, *Harmonisasi Keadilan dan Kepastian Dalam Peninjauan Kembali*, 76.

[44] Jan Michiel Otto, "Toward an analytical framework: real legal certainty and its explanatory factors," In *Implementation of Law in the People's Republic of China* (Leiden: Brill Nijhoff, 2002), 213.

[45] Umar Kasim, Fauzie Yusuf Hasibuan, Basuki Reksowibowo, and Atma Suganda, "Reformulation of Work Relationships on the Outsourcing System in Indonesian Order to Protecting the Rights of Workers," *JL Pol'y & Globalization* 103, (2020): 66.

[46] Hendra Kurnia Putra, Sudarsono Sudarsono, Istislam Istislam, and Aan Eko Widiarto, "Legal Implications of Regulating Ministerial Regulation in Indonesia's Regulatory System," *Journal of Arts and Humanities* 9, no. 6 (2020): 25.

Additional solutions include improving the methods of drafting and reviewing regulations, enhancing the quality of academic studies in the preparation of draft laws, and conducting public testing that involves various stakeholders such as academics, legal practitioners, and civil society. This process ensures that every draft law undergoes comprehensive trials and reviews.[47]

A further approach is the application of the principles of consistency and integration. In the process of lawmaking, the principles of consistency and integration must be applied, ensuring that all new regulations align with existing regulations and do not create differing interpretations or duplication. Moreover, the establishment of a dedicated harmonization body is also needed. A special body or committee should be formed to review, oversee, and ensure that every draft regulation submitted complies with the principles of harmonization.[48] Lastly, the strategy involves the utilization of information technology. Developing a digitalized legislative database system will ensure easy and quick access to all applicable regulations, making the harmonization process more efficient and accurate.

Harmonization efforts are a crucial step in ensuring legal certainty. It guarantees that the law must function as regulations that are adhered to. To achieve this, consistency between all existing regulations is necessary, which can be accomplished through harmonization carried out directly in the process of its formation by adhering to higher regulations. In this context, Article 24 of Law Number 20 of 2003 serves as a vital guideline. Moreover, harmonization efforts also play a role in ensuring that the law is effectively implemented. Some underscores that the law must be executed properly. This includes not only the aspects of enforcement but also the process of drafting regulations that align with the principle of legality.[49]

In general, the findings suggest that legal certainty requires clear regulations issued by the competent authorities. Thus, the established rules not only have a normative aspect but also a juridical aspect that ensures the law operates as a mandate that must be adhered to by all parties. From a legal standpoint, amendments to implementing regulations, such as government regulations, must align with the legal basis established in Article 24 of Law Number 20 of 2003. This emphasizes the importance of integrating various regulations within the national

[47] Anak Agung Gde Oka Widana, "Penyebab Kontestasi Negatif Dalam Beragama Di Negara Berbhineka Pada Era Digital," *Kamaya: Jurnal Ilmu Agama* 7, no. 1 (2024): 43.

[48] Rizki Bagus Prasetio, and Febri Sianipar, "The relevance of the application of the presidential threshold and the implementation of simultaneous elections in Indonesia," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021): 274.

[49] Atika Hidayatunnajah, "Adoption Children with Difference Religion in Guarantee of Religious Freedom Perspective of The Constitution of The Republic of Indonesia 1945 And Islamic Law," *JIL: Journal of Indonesian Law* 4, no. 2 (2023): 216.

legal system to create a conducive legal environment and guarantee that the educational goals mandated in the law are achieved. Appropriate harmonization efforts are expected to result in an equitable and high-quality educational system, while also strengthening the legal foundation for the creation of university autonomy and greater academic freedom.

4. Conclusion

Laws, as regulations set by Parliament and the President, undergo stages such as planning, drafting, discussion, approval, and promulgation. While harmonization ensures legal coherence and prevents conflicts, disharmonization between laws, such as the National Education Law and the Higher Education Law, causes implementation issues. Judicial review and revisions are solutions to address inconsistencies. Harmonization of regulations is crucial, particularly for the government and Parliament, to ensure alignment between laws, especially in education. This process must start at the academic draft and legislation stages to prevent conflicts and unclear implementation. Increased oversight and review of laws causing disharmony, like the National Education and Higher Education Laws, is needed to ensure consistency, particularly regarding university autonomy and academic freedom. The principle of *lex specialis derogat legi generalis* should also be consistently applied.

To achieve coherence in the legal system, enhanced coordination between legislative bodies is necessary to avoid regulatory conflicts. Additionally, a better understanding of the hierarchy of regulations is crucial, where each regulation must be structured according to the applicable level. Revisions to disharmonious regulations are also an important step, beginning with problem identification, harmonization, and re-drafting for greater clarity and consistency. In law-making, applying the principles of consistency and integration is essential to prevent interpretative differences or rule duplication. Therefore, establishing a special body or committee to oversee and ensure the harmonization of regulatory drafts is crucial. Furthermore, leveraging information technology by developing a digitized legal database system will facilitate access and accelerate the harmonization process.

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