
Jurnal Dinamika Hukum

Vol. 23 Issue 1, January 2023

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: 10.20884/1.jdh.2023.23.1.3267

This work is licensed under a Creative Commons Attribution 4.0 International License (cc-by)

Political Law Interpretation on President's Refusal to Sign an Approved Bill with the House of Representatives

Fernando Hasiholan Manalu✉, Retno Saraswati, and Devi Yulida Faculty of Law, Universitas Diponegoro, Semarang - Indonesia

Abstract

Signing by the President is one of the stages in the formation of a law. The constitutional facts show that the President has several times not signed draft a bill that has been mutually agreed upon. The author is interested in discussing: The practice of the President not signing draft laws that have been approved with the House of Representatives. Second; political law interpretation on the President's actions not sign for draft law that is agreed with the House of Representatives. This paper uses a normative juridical approach with a statutory and conceptual approach and is then analyzed deductively. The results obtained are that several laws were passed without the President's approval, which are then analyzed from grammatical, historical, comparative, structural and theological interpretations. On this issue, the authors suggest that there be an agreement in the persona of the President, as well as the President's clear reasons for refusing to sign the bill.

Keywords: Bills; House of Representatives; Presidents; Signing by the President.

Abstrak

Pengesahan atau penandatanganan oleh Presiden merupakan salah satu tahap dalam pembentukan undang-undang. Fakta ketatanegaraan menunjukkan bahwa Presiden beberapa kali tidak menandatangani rancangan undang-undang yang telah disetujui bersama Dewan Perwakilan Rakyat. Oleh karena itu, penulis tertarik untuk membahas mengenai: Pertama; Praktik Presiden tidak menandatangani rancangan undang-undang yang telah disetujui bersama Dewan Perwakilan Rakyat. Kedua; Interpretasi Arah politik hukum atas tindakan Presiden tidak menandatangani rancangan undang-undang yang telah disetujui bersama Dewan Perwakilan Rakyat. Penulisan ini menggunakan metode pendekatan yuridis normatif dengan pendekatan perundang-undangan dan konseptual, lalu dianalisis secara deduktif. Hasil yang didapatkan adalah terdapat beberapa undang-undang yang lahir tanpa penandatanganan oleh Presiden, yang kemudian dianalisis dari interpretasi gramatikal, historis, komperatif, struktur dan teologis. Atas permasalahan ini penulis menyarankan untuk adanya kesepakatan secara in persona oleh Presiden, serta adanya alasan yang jelas oleh Presiden terkait tindakannya tidak menandatangani rancangan undang-undang yang telah disetujui bersama Dewan Perwakilan Rakyat.

Kata kunci: Rancangan Undang-Undang, Dewan Perwakilan Rakyat, Presiden, Penandatanganan oleh Presiden.

Copyright©2023 Jurnal Dinamika Hukum.

Introduction

A law is interpreted as a written regulation, containing norms, made by the competent authority in accordance with standard formation procedures, as well as the obedience of the community to the law (Redi, 2017). In this regard, Indonesia as an independent and sovereign legal state places the law as the supreme commander.

As a country based on law (*rechtstaat*) and not on the basis of power (*machstaat*), Indonesia expresses the ideals or goals of the state through law as its means; in other words, the law is a means used to achieve the goals of the country that have been aspired to. It is proven by the making of law as a guide and reference in the life of society, nation, and state. This is in line with Article 1 paragraph (3) of the Constitution of the Republic of Indonesia which affirms that: "The State of Indonesia is a state of law." The juridical consequence of the affirmation given by

✉Corresponding Author: fhasiholan8@gmail.com

the article is that every policy and action taken by the government must be in line and in tandem with the law .

In line with this, in empirical practice, there still is confusion in the order found in many laws and regulations, namely a lot of materials that should be regulated in law but are regulated in Presidential Decrees or Presidential Regulations or Government Regulations. Above all, there are many statutory regulations at the statutory level or under the statutory law which are contrary to the 1945 Constitution. These deviations should be immediately responded to responsively, so that they do not have an impact on the ineffectiveness of the legal system and the mechanisms set out in the 1945 Constitution.

Frederich Julius Stahl explained that there are 4 (four) important elements in the rule of law criteria, namely:

- a. Protection of human rights;
- b. Separation or division of powers to guarantee those rights;
- c. Government based on statutory regulations; and
- d. Administrative justice in disputes.

In this regard, Indonesia as a state of law certainly cannot be separated from the formation of various laws and regulations to regulate all aspects of state administration in the country, especially the laws which are one of the forms in the hierarchy of laws and regulations in Indonesia. Factors that can influence the process of forming these laws and regulations are divided into two. First, the social structure which includes aspects (standard social elements) as the basis for the existence of society, such as social stratification, social institutions, culture, and power and authority. Second, the value system regarding what is good and what is not good (bad), which a pair of values that must be harmonized is. It is this pair of values that should be reflected in laws and regulations, so that they have a comprehensive meaning as a legal principle.

Jimly Asshidiqie stated that the law that has been enacted and promulgated has gone through a very long process until it is finally passed into public property which is open, binding to the public. If a law that has been prepared, discussed, and debated in such a way is finally enacted and promulgated as it should be. The long stages that are passed are because the law has an important role and contains aspects that are still basic or still become an important outline in the basic law of the 1945 Constitution of the Republic of Indonesia. The law, namely decisions made by the House of Representatives with the joint approval of the President, is ratified by the President. Therefore, there is no central or local law in Indonesia.

In order to create laws that can protect people, fair treatment, laws that protect every citizen of the nation, so that their rights are guaranteed, of course there must be regulations that are used as guidelines in the preparation of statutory regulations as basic rules that apply to drafting regulations from the initial process of their formation to the application of these regulations to the community. Therefore, with the existence of standard rules, each drafting of regulations can be carried out in a definite, standard, and binding manner and method that bind all institutions authorized to form statutory regulations, thus the public's need for good statutory regulations can be fulfilled. Therefore, legal politics of forming statutory regulations is a political policy taken in determining the generally valid legal rules.

Furthermore, the formation of laws and regulations cannot be separated from legal politics. There will always be a link between legal politics and the resulted legislation. Mahfud MD states that legal politics is an official legal policy or line (policy) on law that will be enforced, either by making new laws or by replacing old laws in order to achieve state goals (MD, 2017). In line with this, Satjipto Rahardjo defines legal politics as an activity of choosing and a method to be used to achieve certain social and legal goals in society (Rahardjo, 2009). Furthermore, Soedarto argues that legal politics is a state policy through state agencies authorized to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to (Soedarto, 1979).

Referring to the definitions that have been stated previously, it can be concluded that legal politics can be said to be a tool used by the authorities to achieve state goals. In order to achieve these goals, the legislation, in this case focusing on the formation of laws, must ensure the realization of justice, expediency, order, and legal certainty. When viewed from its nature, legal politics can at least be divided into 2 (two) classifications, namely: first, permanent or longterm as contained in the 1945 Constitution of the Republic of Indonesia which not only plays a role in the formation of laws and regulations, but also constitutes the legal politics of the Indonesian state. Second; periodic or temporary in nature, namely legal politics made in accordance with the development of the situation faced at each particular period, both in forming a law, or in repealing a law that had been in effect previously.

Four amendments to the 1945 Constitution have brought about very fundamental changes in the administration of the Indonesian state. One of the reasons for the changes is the existence of articles contained in the 1945 Constitution which give very large powers to the President, so that checks and balances between state institutions that are characteristic of a state with a presidential system are not achieved. These changes are also seen in the regulations regarding the power to form laws that were previously given to the President then shifted to the House of Representatives as the holder of legislative power. In addition, a Constitutional Court was formed which was given the authority to assess the constitutionality of a law, so that the Constitutional Court could cancel either partially, or the whole of the law which is considered unconstitutional. The presence of the Constitutional Court is considered as the real embodiment of efforts to strengthen the concept of the rule of law in Indonesia (Yulida et al., 2021).

Article 5 paragraph (1) of the amendments to the 1945 Constitution confirms the position and role of the House of Representatives as a legislative body that holds legislative power to form laws as stated in Article 20 paragraph (1) of the 1945

Constitution that the President who holds executive power to implement laws is still given the right to propose draft law to the House of Representatives. It is this change that made the power of national legislation, which was originally in the hands of the President, to be shifted to the House of Representatives.

Furthermore, Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia explains that: "The House of Representatives holds the power to make laws". This provision is then supplemented by Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that: "The House of Representatives and the President for mutual consent." Based on a quo article, it shows that the actual existence of the President in forming laws after the amendments is not completely abolished. A draft law can only become law if there is mutual agreement between the parties at the House of Representatives and the President. If the draft law does not get mutual consent, then the draft law may not be re-submitted within the following period of the House of Representatives, the same as stipulated in Article 20 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The next stage that must be passed by the draft law to become law is the stage of ratification. Article 20 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that: "The President ratifies a draft law that has been mutually agreed to become law." It is further explained that: "In the event that the jointly agreed draft law is not ratified by the President within 30 days of the approval of the draft law, the draft law becomes law and must be promulgated." This stage indicates that a draft law that has been mutually agreed upon will remain in force within thirty days even though it has not been ratified or signed by the President.

This phenomenon is actually not new in the practice of the Indonesian state administration, as shown that several laws that are not signed by the President will remain valid and binding, for example: Law Number 25 of the Year 2002 concerning the Establishment of the Riau Islands Province, Law Number 32 of 2002 concerning Broadcasting, Law Number 17 of 2003 concerning State Finances, as well as Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, and so on.

From this reality, in building legal politics for the process of forming laws, especially at the stage of ratification of the bill, it is necessary to know what the President's legal politics is, bearing in mind how important the stages of ratification of laws are that construct a rule to become a guideline for people's life, a comprehensive understanding is needed and not an excuse against the actions of the President who did not ratify the draft law and legitimize the actions of the President in the stages of forming statutory regulations.

Based on the literature search conducted, there is a previous study that has been relevant to the writing such as Cristalia, D. (Cristalia, 2020) entitled "Legal Politics Mechanism for Ratification of Draft Law in Indonesia". The novelty element of this writing is to focus on the politics of law and conception through grammatical, historical, comparative, structural, and theological interpretations. The next writing is the writing from Yoshua Alexander (2018) which discusses the enactment of laws that are not signed by the President, but this writing does not explain the legal politics of the President who does not sign the law.

Therefore, this paper will further examine the interpretation of the legal politics of the President's action of not signing the draft law that has been mutually agreed upon by the House of Representatives, considering that the stages of

ratification of laws indicated by the signing of the President are very important in constructing rules to become a guide for people's lives. Therefore, what is needed is a comprehensive understanding and not an explanation of the President's action in the stages of forming laws and regulations.

Research Problems

Based on the description of the thoughts that have been described previously, the problems that will be discussed in this paper are: first, how is the practice of the President's refusal to sign a bill that has been agreed with the House of Representatives? and second, what is the legal politics interpretation of the President's action to not sign a bill that has been agreed upon with the House of Representatives?

Research Methods

This writing uses a normative juridical research method with descriptive analytical research specifications. The types of approach used in this paper are conceptual approach and legal approach, which are accompanied by comparative approach to those of the other countries. The authors use secondary data sources related to primary legal materials to analyze and understand legal materials and data obtained indirectly from the sources (objects of research) and from other sources with primary legal materials and secondary legal materials with data collection methods by means of library research. Obtained from the tracing, examining, and searching for legal theories and conceptions, and analyzed through normative qualitative, the regulations and legal materials are analyzed in depth and narratively to draw conclusions.

Discussion

1. The Practice of the President Not Signing the Draft Law that Has Been Agreed with the House of Representatives

Problems in the formation of law can be configured on formal issues in the procedure for the formation of laws and regulations. Regarding the formation of law when viewed from the structural aspect, it is very clear that the meaning of law will be perceived as a written form of law, namely statutory regulations. The formal problem of this formation is related to the deviation from the standard process that should be obeyed in an orderly and absolute manner. The problem regarding the law-making process concerns the deviation of the stages of the procedure, consisting of the stages of planning, preparation, discussion, ratification, and promulgation.

The flow of legal positivism assumes that law is conceptualized as *ius* which has been positivized as *lege* or *lex* in order to guarantee legal certainty. The law must not be abstract; the law must be concrete, so that the law that is formed must be realized in written forms (Susanto, 2010). This flow consequently makes legislation as the main source of law. Law in a juridical sense is a law established by the government of a country, namely laws. Bagir Manan defines legislation as a written decision that is made, determined, and issued by a state institution that has a legislative function, in line with the applicable formation procedures (Manan, 1987). The law is part of the statutory regulations passed by the House of Representatives with the mutual consent of the President. It can be said that legislation is the main

source of law, namely the law which is interpreted as a written regulation that contains legal norms, is made by the ruling authorities, and is implemented by the community and is formed through procedures that have been stipulated in statutory regulations. When talking about the formation of laws, it is not only about the material aspects of a draft law formulation, but also about the stages of formation from the formal aspects.

In Indonesia, regulations regarding the stages of law formation are contained in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, which has been revised 2 (two) times, namely by Law Number 15 of 2019 concerning the Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, and Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The stages in the formation of the law are, among others, including the stages of planning, drafting, discussing, ratifying or stipulating, and promulgation (Chandra et al., 2022).

First, the planning is the stage where the House of Representatives and the President (as well as the Regional Representative Council regarding certain bills) compile a list of bills that will be drafted in the future. This process is generally known as the drafting of the National Legislation Program (*PROLEGNAS*). The results of the discussion are then set forth in a House of Representatives' Decree. Second, the drafting stage of the bill is the preparation stage before the bill is discussed jointly between the House of Representatives and the Government. Third, the discussion of bill material between the House of Representatives and the President. The discussion stage is mutual criticism of a bill. If the bill comes from the President, the House of Representatives and the Regional Representative Council will provide their opinions and inputs. If the bill originates from the House of Representatives, the President and Regional Representative Council will provide their opinions and inputs. If the bill comes from the Regional Representative Council, the President and the House of Representatives will provide inputs and opinions. Fourth, after there is mutual agreement between the House of Representatives and the President regarding the bill being discussed, the President approves the bill by affixing his signature to the draft of the bill. This signature must be carried out by the President within a maximum period of 30 days from the date the bill is mutually approved by the House of Representatives and the President. If the president does not sign within the stipulated time, the bill will automatically become a law and must be enacted. As soon as the President signs a bill, the Secretary of State gives the number and year of the bill. Fifth, the promulgation is the placement of laws that have been passed into the State Gazette, namely for the main body of the Act and Supplement to the State Gazette.

The purpose of this promulgation is to ensure that everyone knows the law that will bind them.

Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that: "Every draft law is discussed by the House of Representatives and the President for mutual consent." Furthermore, in Article 5 paragraph (1) of the Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2014 concerning the Order, in essence it also affirms that the House of Representatives has a legislative function, which is in the process of discussing and drafting laws with the government to obtain mutual approval to be ratified through a plenary meeting held by the House of Representatives. In the legal system in

Indonesia, only is one type of law known, namely a decision made by the House of Representatives with the joint approval of the President and ratified by the President. In addition, there are no laws enacted by other institutions, either at the central or in the regions, so that there is no such term as a Central Law or a Local Law in Indonesia. Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that: "Every draft law is discussed by the House of Representatives and the President for mutual approval". It is not without reason why the formation of a law must obtain the approval of the House of Representatives. This is because the House of Representatives, which is a legislative body representing the Indonesian people, has a legislative function as mandated by Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "The House of Representatives holds the power to form laws." Therefore, every law formation must go through the House of Representatives as a legislative institution that is given the authority to form laws.

Based on the explanation in the *a quo* article, the meaning of mutual agreement in the process of forming the law is that the House of Representatives cannot run alone without involving the approval of the President. Such provisions are affirmed in Article 20 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which in essence explains that when a draft law does not get mutual consent, then the draft law cannot be tried within a period of time management of the same House of Representatives. Thus, it can be ensured that every draft that has been approved has received approval from the President.

Talking about mutual agreement, if further examined, the arrangements contained in Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia do not explicitly state that a draft law must be discussed together or jointly. What is emphasized in this article is regarding mutual consent, while the discussion of draft laws can be carried out separately by the House of Representatives and the President, who in the end, the 2 (two) institutions provide agreement to the draft law that has been discussed (Isra, 2010). The consequences of this interpretation certainly greatly affect the discussion regulated in the House of Representatives' order of conduct. There are 2 (two) scenarios in giving mutual consent to a draft law, namely: first, through the existing trial mechanism, a bill is decided by voting with a majority of supports in favor of the government's version of the bill, and second, the draft law is taken by voting which wins the version proposed by the House of Representatives (Cristalia, 2020).

Ratification carried out by the President in accordance with the provisions of Article 20 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, namely by the signing and ordering its promulgation in the State Gazette and the Supplement to the State Gazette, constitutes a formal ratification that is administrative, and the gavel of the plenary session of the House of Representatives declaring that the draft law has been jointly approved by House of Representatives with the government as material ratification (Asshiddiqie, 2014). The draft law that has been materially ratified cannot be changed anymore, and the material is final, and in this case, is categorized as meaning material, or also known as *wet in materiele zin* (Permaqi, 2017).

The next problem is the fact that the state administration shows that the President has several times refused to carry out the ratification of a bill that has been agreed with the House of Representatives. For example, during the reign of

Megawati Soekarno Putri, there were at least 4 (four) draft laws that were not signed, namely Law Number 25 of 2002 concerning the Establishment of Riau Islands Province, Law number 32 of 2002 concerning Broadcasting, Law number 17 of 2003 concerning State Finance, and Law Number 18 of 2003 concerning Advocates. The reason for not signing is that Law Number 25 of 2002 concerning the Establishment of Riau Islands Province received protests from the community, especially the people in Riau. Furthermore, Law Number 32 of 2002 concerning Broadcasting was not signed by the President on the grounds that the substance of the law was questioned by the President, but the ratification was continued by the House of Representatives. Likewise with Law Number 17 of 2003 concerning State Finance and Law No. 18 of 2003 concerning Advocates, which, in substance, raises pros and cons from various circles of society.

A similar situation also occurred in the government of President Joko Widodo such as Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the Consultative Assembly, the People's Representative Council, and the Regional Representative Council. In this regard, the Minister of Law and Human Rights, Yasonna H. Laoly admitted that he did not have time to report the articles on the amendments to the revision of the law to the President. Therefore, it can be concluded that the process of ratification by the House of Representatives and the government was without the knowledge of the President (Mardatillah, 2018). On this matter, the President took no action to have signed the law and admitted that he caught the unrest in society with the demonstration movement related to the contents of Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the Consultative Assembly, the People's Representative Council, and the Regional Representatives Council (Agus, 2018). President Jokowi who did not sign against the law also chose not to take other alternative steps, for example, by issuing a Government Regulation in Lieu of Law (*PERPPU*) to withdraw provisions that are not in accordance with state's objectives.

Historically, the government of President Susilo Bambang Yudhoyono issued Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to cancel Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors which regulates the mechanism for the election of regional heads indirectly. Furthermore, Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission also became a law that was not signed by President Joko Widodo. Jimly Asshiddiqie is of the opinion that the President's attitude is not in accordance with the practice of constitutional ethics even though, in general, the President ratifies laws that have been mutually agreed upon between the government and the House of Representatives (Mashabi, 2020). The 1945 Constitution of the Republic of Indonesia basically provides an opportunity for the President if he does not approve the draft law, namely by taking the following actions (Sumarandak, 2018):

- a. in the case of compelling interests, the President may issue government regulations in lieu of laws;
- b. the government regulation must obtain approval from the House of Representatives; and
- c. if it cannot be approved by the House of Representatives, then it must be revoked.

The above rules show that the President is in the early stages of forming a government regulation in lieu of a law; it does not require approval from the House of Representatives. The approval of the House of Representatives is required when wanting to make the Government Regulation (*PERPPU*) into law within a period of one year. As previously explained, during his administration, President Susilo Bambang Yudhoyono issued *PERPPU* as an action of rejecting the law.

The governance concept regarding the ratification of bills related to the distribution of power theory emphasizes that power is still exercised but supervises one another between one power institution and another by applying the principle of checks and balances. Meanwhile, the existence of the provisions of Article 20 Paragraph (5) actually makes the President in exercising the "veto right" in the law become ineffective.

Based on writing above, then the President's refusal by not signing the draft law must be based on appropriate legal politics considerations, and with the reasons outlined above, when the President may judge that the bill could pose a danger at the implementation level, of course he can reject or disapprove of it. As well as the President's position as head of state at a time the head of government must be followed by a responsible attitude, as well as harmonious coordination between the Minister and the President.

2. Interpretation of Political Law when the President Does Not Sign the Bill That Has Been Agreed with the House of Representatives

The action of the President not to ratify or sign a draft law is one of the polemics in the formation of law in Indonesia. The problem of forming laws can be configured on formal issues in the procedures for forming laws and regulations. The formal problem of this formation is related to deviations from the standard process which should be obeyed in an orderly and absolute manner. In connection with the process of ratifying laws that were not signed by the President, this is a polemic in the formation of legislation in Indonesia. If the president does not sign a law, there must be problems of its own because before it reaches the stage of ratification, there are stages of discussion, preparation, and planning which should have been carried out in an orderly manner and constitute an inseparable unit.

Beside on that phenomenon, Algra and Duyvendijk explain that there is no single rule that can be simply put into practice because every rule must be explained (interpreted) before it can be practiced (by the former). This technique is called the interpretation method (Algra & Duyvendijk, 1991). Therefore, the next authors will discuss the interpretation of the legal politics of the President not signing the draft law, described as follows:

First, grammatical interpretation, that is, focused on the words contained in the text of the law. This method of interpretation emphasizes a textual approach to the thinking of the legislature. This method interprets the words in the law literally (Susanti & Efendi, 2019). Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia essentially states that if within a period of 30 days the approved draft law is not ratified by the President, then the draft is legally valid and must be promulgated. The phrase "not validated" gives interpretation that the President may reject or not sign a draft law that has been approved together with a *contrario* (Riswanto, 2016).

In the Indonesian constitutional system, the right to reject a bill that is discussed by the House of Representatives and the President is not like the veto power that exists in various countries such as the United States, as in Article 1 section 7 of the Constitution of the United States, if the bill is not approved by the President, then it is returned accompanied by objections, and then have it considered. Upon reconsideration two-thirds of the members of the Chamber agree to pass the Draft, the draft will be submitted together with objections, to the other chamber, which will also reconsider, and if approved by two-thirds of the Chamber, the draft will become law. In the event that a draft law has been approved by a majority of votes in the plenary session of the House of Representatives, then it is considered as mutual approval. If the President rejects the draft law, he can still use his right not to ratify a bill that has been decided by the House of Representatives by not signing it. In such case, the President decides not to ratify the bill, so that the President's veto can be said to refuse to ratify the bill.

Jimly Asshiddiqie provides a concrete understanding of veto rights. A veto is the right granted by the President to reject a bill by not passing it. Related to the meaning of the joint approval of the President and the House of Representatives in the legislative process in the Constitution of the Republic of Indonesia, the President only has the option to approve and as if eliminating the function of the veto right.

Second, interpretation comparative, namely making comparisons of a law with other laws, including comparisons with the laws of other countries (Mawar, 2020). When a constitutional comparison is made between countries, the President's action not to ratify a bill cannot be equated with the veto power adopted by the United States. This is because Article 1 section 7 of the Constitution of the United States stipulates that, if the President does not approve the draft law, then the draft is returned accompanied by considerations and objections regarding the material substance of the bill. This is of course contrary to Indonesia, where even though the President refuses to ratify the approved draft law, the draft remains valid for a specified period of time. Even though the Indonesian state administration does not explicitly recognize the term veto power, the President's action of not ratifying the draft can be interpreted the same as a veto. Jimly Asshiddiqie explained that the veto is the right of the President to reject a draft law by not ratifying it. This is related to the meaning of mutual agreement between the President and the House of Representatives in the legislative process. In the event that the draft law has been approved by a majority vote in the plenary session of the House of Representatives, it is considered as mutual agreement. This understanding must be accepted because in a democratic system, the decisionmaking process must be attended together, but the decisions taken do not mean that they must satisfy all parties. Against the decision that has been taken together, the President whose interests are defeated in the trial, can exercise his right not to ratify a bill that has been decided by the House of Representatives, namely by not signing the draft (Toding, 2017).

Third, historical interpretation, namely by examining the history of the formation of the law (Ginting, 2017). Historical interpretation of laws is a method of interpreting the meaning of laws according to their occurrence by examining history, including interpretations of the history of laws (*wet historicch*) and legal history (*recht historicch*). *Wet historicch* is looking for the intent of the statutory regulations as seen by the legislators when the law was formed. Meanwhile, *recht historicch* is a method of interpretation that understands the law in the context of

its legal history. If examined further, the provisions of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia are a real embodiment in reducing the amount of power of the President in the Republic of Indonesia the New Order. In fact, the article shows sharing power in the formation of law in Indonesia. If examined historically, the 1945 Constitution gives very large authority to the President, which is also known as executive heavy (Sumarandak, 2018), which can be seen as follows: the President holds executive and legislative powers, and judiciary, the President has the power to form government regulations implementing laws or *pouvoir reglementair*, as well as laws containing provisions regarding high state institutions can be made by the President. At this time, the President is given the authority to carry out his functions as an executive and to form laws or legislatures. Therefore, with the reforms and demands for a very large reduction in the President's authority particularly with regard to the discussion of Article 20 paragraph (5) which has already been discussed from the first amendment which began in 1999 by the Ad Hoc Committee III of the 5th MPR Working Committee.

In discussing the draft Article 20 paragraph (5) of the 1945 Constitution, there were many pros and cons among members of the House of Representatives because the draft Article 20 paragraph (5) is a reaffirmation that the President only has executive power, which is the executor of the law, but not the authority to form laws even though draft laws can come from the President.

This desire was reinforced by an incident when President Suharto refused to sign the law on broadcasting which at that time had been discussed and approved by the House of Representatives and the President together with the relevant Ministers (Laksono, 2017). However, with the ratification of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia by the People's Consultative Assembly on August 15, 2000, this has juridical implications for the President who has given mutual consent that there is no longer any reason to reject the draft law.

Fourth, systematic or structural interpretation, which explains the meaning of legal provisions by relating them to the entire legal system (Ginting, 2017). In this method, the interpretation of a statutory provision must be connected with the provisions of other statutory regulations, so that in interpreting statutory regulations it may not depart from or deviate from the legal system of a country. Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia and then law Number 12 of 2011 concerning the Establishment of Laws and Regulations which is an organic law from Article 22A of the Constitution of the Republic of Indonesia in the framework of the procedures for forming laws, in fact before the stage of ratification of the draft law, there is a discussion stage where the discussion is divided into 2 levels. In accordance with Article 68 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, Level 1 discussion takes the form of: Introduction, the deliberation consists of the House of Representatives providing an explanation, and the President conveys his views if the bill is a proposal from the House of Representatives, and vice versa if the bill originates from the President. Next, investiture of the problems, both from the President, House of Representatives and the Regional Representative Council, and Mini Opinion Submissions. Furthermore, the Level II Discussion is a decision in the plenary meeting. Later revealed to Article 73 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of

Laws and Regulations, which guarantees the regulation of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which article stipulates that even though the President does not sign the approved draft law, the draft remains valid as law within a period of 30 days.

Fifth, theological interpretation, namely in the formation of a law, looking at the state of the community, so that it tries to adjust to the factual conditions of the community (M. Manullang, 2019). It is undeniable that the law is a legal product that cannot be separated from the political process. This view cannot be separated from the aspect of empiricism because, in reality, aspects of political interests will always color the process of law formation (Anggoro, 2019). Nevertheless, it should be underlined that the political process carried out must give essence to the legislation and be adjusted to the social situation relations that are relevant to the conditions of the community concerned (Khalid, 2014). This social situation can be seen from the dynamics in society through demonstrations to reject a draft law. Laws that are not signed by the President are generally laws whose existence is considered to be contrary to the legal ideals of the Indonesian people. Therefore, the President's rejection can be said to be a draft law that is full of the interests of certain groups.

The formation of laws that go through a political process must look at the relationship between the President (executive) and the House of Representatives (legislative). The President and the House of Representatives are two institutions that both receive a direct mandate from the people, so they are often trapped in executive and legislative tensions, especially if the power of the majority political parties in the legislative body is different from the President's political parties. Meanwhile, if the majority in the legislative body is the same as the political parties supporting the President, the practice of a presidential system is easily trapped into an authoritarian government.

Based on the interpretative approach described above, the authors argue about the legal politics direction of the President who does not sign a draft law that has been mutually agreed upon by the House of Representatives must have an agreement from the President in person to accept or reject the draft law and write it down in the minutes of discussion of the draft law. This approval is carried out, so that it does not become an excuse in the future if the President does not know the content in the draft law because it is delegated by the ministers in accordance with Article 49 paragraph (2) Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, which states that the President can assign ministers to represent the President to discuss draft laws together with the House of Representatives.

Furthermore, the 30-day period to pass the bill is too long because the President is involved in discussing the bill with the House of Representatives. And if the President neither pass the bill nor issue a Government Regulation in Lieu of Law (*PERPPU*), then he must provide reasons including philosophical, juridical, and sociological foundations related to not signing the bill, which can later be used as a reference for changing laws in the future or as a reference for the public to conduct a judicial review to the Constitutional Court, so that the affirmation of the principle of checks and balances can be carried out.

Conclusion

Based on the discussion above, a common thread can be drawn that the practice of the Indonesian state administration shows several phenomena of draft

laws that are not signed by the President, for example, Law Number 25 of 2002 on the Establishment of the Riau Islands Province, Law Number 32 of 2002 on Broadcasting, Law Number 17 of 2003 concerning State Finance, as well as Law Number 19 of 2019 concerning the second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, and so on.

The President's refusal by not signing the draft law must be based on appropriate legal politics considerations, and with the reasons outlined above, the President may judge that the bill could pose a danger at the implementation level; therefore, of course he can reject or disapprove of it. As well as the President's position as the head of the state, at a time the head of government must be followed by a responsible attitude, as well as harmonious coordination between the Ministers and the President.

The President's action not signing a draft law that has been agreed upon with the House of Representatives may be interpreted from various aspects, namely: interpretation grammatical, which method of interpretation emphasizes a textual approach to the thinking of legislatures; interpretation comparative, namely making comparisons of a law with other laws, including comparisons with the laws of other countries; historical interpretation, namely examining the history of the formation of laws because there have been changes related to changes to the Constitution of the Republic of Indonesia; systematic or structure interpretation, which explains the meaning of legal provisions by relating them to the entire legal system; and theological interpretation, when formation of a law looks at the condition of society, so that it seeks to adapt to the factual conditions of society.

Suggestion

Departing from these problems, the authors suggest that there is a form of agreement from the President in person as a form of approval for the draft law, either to declare rejection or accept the draft law. The *a quo* action aims to avoid political reasons in the future when the President refuses to sign a draft that has been mutually agreed upon. In line with this, as a democratic country, the President's action of not signing the draft law must be accompanied by the reasons including the philosophical, juridical, and sociological foundations presented to the House of Representatives. This action is also intended to be used as a guideline by the public in a judicial review to the Constitutional Court. In order to support this idea, it is then necessary to adjust the relevant legal rules, especially in the rules that contain the formation of laws, both in the form of laws and derivative rules under them.

References

- Algra, & Duyvendijk. (1991). *Introduction to Legal Studies*. Build Creation.
- Anggoro, S. A. (2019). Politik Hukum: Mencari Sejumlah Penjelasan. *Jurnal Cakrawala Hukum*, 10(1). <https://doi.org/10.26905/idjch.v10i1.2871>
- Asshiddiqie, J. (2014). *Regarding the Law*. Press Eagle.
- Chandra, M., Barid, V., Wahanisa, R., & Kosasih, A. (2022). Juridical Overview Formation of Systematic, Harmonious and Integrated Legislation in Indonesia. *Indonesian Legislation Journal*, 19(147), 1–11.

- Cristalia, D. (2020). Legal Politics Mechanism for Ratification of Draft Laws in Indonesia. *Al-Balad: Journal of Constitutional Law*, 2, 207–208.
- Ginting, B. (2017). Historical Systematic Grammatical Interpretation of the Alleged Blasphemy Case by Ahok. *Journal of Law Pro Justitia*, 2(2), 65.
- Isra, S. (2010). *Shifting the Function of Legislation, Strengthening the Parliamentary Legislation Model in the Indonesian Presidential System*. Raja Grafindo Persada.
- Khalid, A. (2014). Interpretation of Law by Judges in the Indonesian Judicial System. *Al 'Adl*, 6, 9–36.
- Laksono, F. (2017). *Relations between the Constitutional Court and the House of Representatives and the President as Forming Laws (Study of the Dynamics of Implementation of Constitutional Court Decisions through Legislation Years 2004-2015)*. Universitas Brawijaya.
- M. Manullang, E. F. (2019). Penafsiran Teleologis/Sosiologis, Penafsiran Purposive dan Aharon Barak: Suatu Refleksi Kritis. *Veritas et Justitia*, 5(2), 262–285.
<https://doi.org/10.25123/vej.3495>
- Manan, B. (1987). *The Role of Legislation in National Law Development*. Armico.
- Mardatillah, A. (2018). Consequences of Testing Laws Without the President's Signature. *Hukumonline*. <https://www.Hukumonline.com/berita/a/konsekuensi-uji-uu-without-signing-presidentlt5a8eade16445e?page=3>
- Mashabi, S. (2020). *Jimly Asshiddiqie: The president should not not sign the revised KPK Law*. Cash. <https://national.kontan.co.id/news/jimly-asshiddiqieppresident-tak-patut-tak-tandatangani-uu-kpk-hasil-revisi>
- Mawar, S. (2020). Legal Discovery Methods (Interpretation and Construction) in the Context of Legal Harmonization. *Journal of Justisia*, 7(1), 37–72.
https://www.researchgate.net/publication/269107473_What_is_governance/link/548173090cf22525dcb61443/download%0Ahttp://www.econ.upf.edu/~reynal/Civil_wars_12December2010.pdf%0Ahttps://think-asia.org/handle/11540/8282%0Ahttps://www.jstor.org/stable/41857625
- MD, M. (2017). *Indonesian Legal Politics*. Press Eagle.
- Permaqi, F. (2017). Legal Politics Formation of Government Regulations in Lieu of Laws on the Principle of Compulsory Emergencies. *Journal of Legislation In*, 14(4), 407–420.
- Rahardjo, S. (2009). *Progressive Law. A Synthesis of Indonesian Law*. Genta Publishing.
- Redi, A. (2017). *Law Formation of Legislation*. Graphic Ray.
- Riswanto, A. (2016). Strategi Politik-Hukum Meningkatkan Kualitas Kinerja DPR Ri Dalam Produktivitas Legislasi Nasional. *Jurnal Cita Hukum*, 4(2).
<https://doi.org/10.15408/jch.v4i2.4140>

- Soedarto. (1979). The Development of Legal Science and Legal Politics. *Law And Justice*, 7(5), 15–16.
- Sumarandak, W. (2018). Authority of the President of the Republic of Indonesia in the Legislative Sector after the Amendment to the 1945 Constitution of the Republic of Indonesia. *Lex Administratum*, 3(2), 67. <http://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127>
<http://publicacoes.cardiol.br/portal/ijcs/portugues/2018/v3103/pdf/3103009.pdf>
http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-75772018000200067&lng=en&tlng=
- Susanti, D., & Efendi, A. (2019). Understanding the Text of the Law with the Exegetical Interpretation Method. *Journal of Kertha Patrika*, 41(2), 141.
- Susanto, A. F. (2010). *Non-Systematic Law: Foundations of the Philosophy of Development of Indonesian Law*. Genta Publishing.
- Toding, A. (2017). DPD in the Indonesian Parliament Structure: Discourse on Annihilation Versus Strengthening DPD in the structure of The Parliament. *Constitution*, 14(2).
- Yulida, D., Herawati, R., & Indarja, I. (2021). Perluasan Kewenangan Mahkamah Konstitusi Dalam Menguji Konstitusionalitas Rancangan Undang-Undang Pengesahan Perjanjian Internasional Melalui Judicial Preview. *Diponegoro Law Journal*, 10(2), 342–354.