

POLITICAL LAW CONSTITUTION CONCERNING MAKING LAW CONNECTED WITH MAKING THE REGULATION OF THE VILLAGE IN THE INDONESIAN LEGAL SYSTEM

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ABSTRACT

The political law that will be discussed in this paper is concerning making law that listed in Article 22A of The Constitution of The State of The Republic of Indonesia of The Year 1945. In Article 22A publish that “further provisions regarding the procedures for the enactment of laws shall be regulated by law”. The phrase “regulated by law” has a meaning that should be regulated with a separate law and the mean of law is Law Number 12 2011 about Making Rules and Law Number 15 /2019 about Amendment Law Number 12 2011 about Making Rules. Meanwhile, the regulation of the village and their promulgation is set firmly in the Law Number 6 2014 about Village. That Law is disharmony when linked with the Article 22A, which in this paper is referred to by the term politic law constitution concerning making law.

Keywords: Political Law, Constitution, Regulation and Promulgation

ABSTRAK

Politik hukum yang akan didiskusikan dalam makalah ini berhubungan dengan pembuatan hukum atau undang-undang sebagaimana yang diatur dalam Pasal 22A Undang-Undang Dasar Republik Indonesia Tahun 1945. Dalam Pasal 22A yang menyebutkan bahwa “Ketentuan lebih lanjut tentang tata cara pembenukan undang-undang diatur dengan undang-undang”. Kalimat “diatur dengan undang-undang” telah memiliki arti bahwa seharusnya diatur oleh undang-undang” dan maksud dari Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan Jo Undang-Undang No. 15 Tahun 2019 tentang Perubahan Atas Undang-Undang No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Sementara ketentuan tentang Desa dan peraturan pelaksanaanya diatur dalam Undang-Undang No. 6 Tahun 2014 tentang Desa. Ketentuan tersebut sangatlah tidak harmonis jika dihubungkan dengan ketentuan Pasal 22A, karena itu dalam makalah ini akan difokuskan pada politik hukum konstitusi dalam pembuatan undang-undang.

Kata Kunci: Politik Hukum, Konstitusi, Peraturan dan Keputusan.

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A. INTRODUCTION

Speaking of political law, it cannot be separated from the space and definition that surrounds it. The space of the political law is charged on aspects of the institution of making law, position of the political law and entire factors both internal and external in the making of rules. Whereas the definition of political law leads to the legal policy about the law to be implemented either by making a new law or replacing the old law, to achieve the objectives of the state (Moh. Mahfud MD, 2018: 1). Hikmahanto Juwana revealed that political law has two dimensions. First, political law is a basic reason for the issuance of laws and rules (basic policy). Second, political law is the goal or reason behind the enforcement of rules (Hikmahanto Juwana, 2005: 24-39). Referring to the above definition, the subject of political law is explicitly based on the official policy that determines and establishes the direction, shape, and content of the law to be established. Overall scope, the political law can be understood on at least five things. First is a basic policy covering concepts. The second is state official. The third is legal material that includes legal planning, legal drafting, and legal implementing. The fourth is the process of making law. The fifth is the goal of political law (Nomensen Sinamo, 2016: 31).

Linked to the abovementioned, it is fairly clear that the political law is loaded and closely related to the process of making laws based on the Constitution of the State of the Republic of Indonesia of the Year 1945. The constitution defined “the constitution of a state is the written document” (Bachtiar, 2018: 71), being the basic framework for the implementation of the state. As *grund norm*, the Constitution of the State of the Republic of Indonesia of the Year 1945 becomes the basis for making legal norms or rules. In this regard, the political law that will be discussed in this paper is related to making laws which are stated in Article 22A the Constitution of the State of the Republic of Indonesia of the Year 1945. Article 22A describes the substance “further provisions regarding the procedures for the enactment of laws shall be regulated by laws”.

From the substance above, the writer reveals that political law constitution is an official state policy that implements making laws to be regulated by laws. This policy is a direction and basis for regulating it into law. On closer inspection, the phrase “regulated by” is clearly pronounced in the substance above. Understanding the phrase above cannot be interpreted only

from a general perspective. The choice of words and phrases in the Constitution of the State of the Republic of Indonesia of the Year 1945 will have an impact on different meanings.

As a basis for understanding the meaning of words and phrases in The Constitution of The State of The Republic of Indonesia of The Year 1945, it can be seen in the Decision of the Constitutional Court Number 016-PUU-IV /2006 dated December 19, 2006. "Regarding the regulation of corruption courts, there is no legal certainty and must be arranged by a separate law. From this verdict, it is clear that the phrase "regulated by" has a meaning that must be regulated by a separate law. Unlike the case with the phrase "regulated in", this phrase means that it is regulated in law, not by a separate law. Thus, the direction of political law constitution concerning the procedures for the making law is by a separate law. The order to be regulated by separate law has produced Law Number 10 2004 about making rules. Using the title of the making rules is not making law has a reason for doing cover overall regulations of the state that previously had a firm legal basis such as the People's Consultative Council Decree Number III / MPR / 2000 about The Source of Law and Hierarchy of Rules where the regulation is not only the law but also government regulation and local regulation (Maria Farida Indrati, 2007: 5-6). Thereby, at that time, House of Representatives of The Republic of Indonesia proposed to use the title Procedures for the Making Rules and eventually become making rules.

In the implementation period, Law Number 10 2004 about making rules is not able to follow the dynamics of the law so that the improvement is carried out into Law Number 12 2011 about making rules. The scope of Law Number 12 2011 about making rules, among others the principle of making rules, type, hierarchy, and content of rules, promulgation, and making rules preparation technique. Furthermore, Law Number 12 2011 concerning making rules is also deemed incapable of fulfilling the development of public needs so that it is refined through Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. The scope of law includes the mechanism for discussing a draft law that has been discussed by the House of Representatives of the Republic of Indonesia with the President in a period to be discussed again in the next period to ensure continuity in the making law, promulgation rules implemented by the minister or the head of the institution that making law affairs, and making rules monitoring.

Based on the explanation, there is a complete correlation between Law Number 12 2011 concerning making rules and Law number 15 2019 concerning Amendments Law Number 12

2011 concerning making rules with Law Number 6 2014 about Village. In simple terms, the main points of the content in Law Number 6 2014 about Village can be seen as follows:

- a. Aim of Rural Setting
- b. Position and Type of Village
- c. Reforming and Authority of the Village
- d. Village Government
- e. Right and Obligations of the Village and Village
- f. Financial Village and Asset
- g. Village Development and Development of Rural Areas
- h. Owned Enterprise Village and Cooperation Village
- i. Village Community Institutions and Traditional Village
- j. Special Conditions of Traditional Village
- k. Guidance and Supervision
- l. Regulation of the Village.

In the subject of law, there is a content of regulations of the village. Article 1 point 7 Law Number 6 2014 about village defines that regulation of the village is the rule set by the headman of the village after being discussed and agreed on Village Consultative Body. Hereafter, Article 69 Section (11) regulation of the village and rules promulgated in the Gazette of the Village Headman and Village News by the village secretary. Based on the provisions above, there is an explicit understanding that regulations of the village are rules that are promulgated in the Gazette of the Village Headman and Village News by the village secretary. In this context, the authors indicate that there is an error made by the legislators in placing the regulation of the village and promulgation in Law Number 6 2014 concerning Village. Supposedly, regulation of the village and their promulgation become the domain of Law Number 12 2011 concerning making rules which regulate the rules based on the delegation (order) of Article 22A The Constitution of the State of the Republic of Indonesia of the year 1945, “further provisions regarding the procedures for the enactment of laws shall be regulated by law”. Based on the problems, there needs to be a more in-depth and comprehensive analysis that the author will explain in this scientific paper.

B. FOCUS OF THE PROBLEMS

1. How is political law constitution concerning making law connected with making the regulation of the village?

2. How are the regulation setting of the village and their promulgation be based on the political law constitution concerning making law?

C. RESEARCH METHOD

This research is a normative juridical research that focuses on norms that are derived from the rules that currently apply as positive law. This study used secondary data, which is obtained from a library research in the form of laws and regulations, books, and scientific papers. In collecting secondary data, the authors focused on identifying, taking inventory, and analyzing various legal materials in the form of laws and regulations, research results, as well as the scientific work of scholars that are related to the problems. In analyzing the data, the authors used qualitative analysis. Qualitative analysis is an analysis that describes the prevailing laws and regulations, and it was interpreted to answer research problems.

D. FINDINGS AND DISCUSSION

1. Political Law Constitution Concerning Making Law Connected With Making The Regulation of The Village

The relationship between political law and the constitution provides a horizon in positioning the actual existence of law. Political law that is exposed as a legal policy regarding the law that will be implemented in the making law confirms the existence of a scientific study that is coherent with rules (basic policy). The presence of political law has initiated the emergence of a point of view in understanding the objectives or reasons for the enactment of rules. Based on the substance framework above, the issue of rules is a scope that needs to be explored concerning the constitution. The constitution as a description of the entire constitutional system and a collection of regulations that underlie, regulate, or direct the government of a state, has a space to be put forward. The space between rules and the constitution becomes a pattern that is difficult to argue with further exploration. In this context, the authors present the political law constitution issue that is correlated with making the regulation of the village. If traced the rules, the regulation of the village has a place in the arena of rules since they come into force Law Number 10 2004 about making rules. Article 7 section (1) and (2) Law Number 10 2004 about making rules elaborate:

- (1) Types and hierarchy of Rules are as follows:
 - a. Constitution of the Republic of Indonesia of 1945;
 - b. Law/Government Regulation In Lieu of Law;

- c. Government Regulation;
 - d. Presidential Regulation;
 - e. Regional Regulation.
- (2) Regional Regulation as intended in section (1) point e include:
- a. Province Regulation made by the province legislative along with the governor;
 - b. Regency/municipality regulation made by the regency/municipality legislative along with regent/mayor;
 - c. Village regulations/same level regulation, made by a board representative of the village or the other name along with the head of village or the other name.
- (3) Further provisions on the procedure of making village regulation/same level regulation will be governed by the regency/municipality Regulation.
- (4) Types of Rules other than as intended in section (1), recognized and have the force of binding all ordered by higher Rule.
- (5) The power of Rules is in accordance with the hierarchy as intended in section (1).

Considering the explanation above, it is clear that the provisions of the regulation of the village are strictly regulated in Law Number 10 2004 concerning making rules. Explicitly, regulation of the village is a part of regional regulation, which in the dimension of legal force have the lowest position based on hierarchy. Next, making the village regulation is established by the village consultative body or other names together with the village headman or other names. This means, making the village regulation can only be carried out by the village headman and the representative in the village (or any other name). However, since the promulgation and enactment of Law Number 12 2011 concerning making rules on August 12, 2011, Law Number 10 2004 has been revoked and invalid. The enactment of Law Number 10 2004 concerning making rules has ceased and shifted to the new law, namely Law Number 12 2011 concerning making rules.

The enactment of Law Number 12 2011 concerning making rules also provides novelty in the fragments of types and hierarchies of rules. Article 7 section (1) Law Number 12 2011 about making rules organize:

- (1) Types and hierarchy of Rules consist of:
 - a. Constitution of the Republic of Indonesia of 1945;
 - b. People's Consultative Council Decree;

- c. Law/Government Regulation In Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Province Regulation; and
- g. Regency/Municipality Regulation.

(2) The power of Rules is in accordance with the hierarchy as intended in section (1).

Observing the provisions above and linked to the regulation of the village, it is clear that the regulation of the village is not explicitly stated in this law. The absence of content regarding the regulation of the village has increasingly confirmed that regulation of the village is not ruled since the enactment of Law Number 12 2011 concerning making rules. There are striking differences between two laws regarding the regulation of the village, it is understandable that they have reasons and a legal review that oversees them.

Looking further at the regulation of the village, since the promulgation and enactment of Law Number 6 2014 concerning Village on January 15, 2014, it is clear that the presence of this law reinforces the issue of regulation of the village as rules.

Article 1 point 7

Regulation of the village is the rule set by the village headman after being discussed and agreed with Village Consultative Body.

Article 69 section (1)

The type of regulation in the village consists of regulation of the village, rules along with village headman and village headman rules.

Article 69 section (11)

Village Regulations and rules promulgated in the Gazette of the Village headman and Village News by village secretary.

Article 69 section (12)

In the implementation of village regulations referred to in section (1), the village headman set regulation village headman as the rules of procedure.

From the provisions listed above, it can be understood that the types of regulation in the village consist of the regulation of the village, rules along with village headman, and village headman rules.

Observing regulation of the village, it is clear in Law Number 6 2014 concerning Village that it is explicitly stated that the regulation of the village rules. Given this, questions arise within the scope of state regulation regarding the phrase “regulation of the village”. The legal expert Parsons argues that the legal order can function properly if one of them has clarity in terms of its legitimacy (Edwin M. Schur, 1968: 78-82). In line with what Parsons said, the authors believe that the phrase “regulation of the village” is wrong, illegitimate, and contradicts The Constitution of The State of The Republic of Indonesia of The Year 1945 if it is linked to a political law constitutional perspective that is only formed by a separate law. It is only Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. This law is clearly formed based on political law in Article 22A of The Constitution of The State of The Republic of Indonesia of The Year 1945 which states “further provisions regarding the procedures for the enactment of laws shall be regulated by law”.

To strengthen this argument, if traced to Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules, it is precisely the consideration (legal basis), there is Article 22A of The Constitution of The State of The Republic of Indonesia of The Year 1945 as the basis for the formation of Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. Juridically, this formation received a direct order (delegation) by The Constitution of The State of The Republic of Indonesia of The Year 1945 to be formed with a separate law. Upon careful attention, the phrase “regulated by” is clearly pronounced in the substance above. Understanding the phrase above cannot be interpreted only from a general perspective. The choice of words and phrases in The Constitution of The State of The Republic of Indonesia of The Year 1945 will have an impact on different meanings.

As a basis for understanding the meaning of words and phrases in The Constitution of The State of The Republic of Indonesia of The Year 1945, it can be seen in the Decision of the Constitutional Court Number 016-PUU-IV /2006 dated December 19, 2006. "Regarding the regulation of corruption courts, there is no legal certainty and must be arranged by a separate law. From this verdict, it is clear that the phrase “regulated by” has a meaning that must be regulated by a separate law. Unlike the case with the phrase “regulated in”, this phrase means

that it is regulated in law not by a separate law. Thus, the direction of political law constitution concerning the procedures for the making law is by a separate law. From the analysis and reasoning above, it is clear that Law Number 6 2014 concerning Village which organizes regulation of the village does not meet the legal principle of *lex superior derogat legi inferior* which means that high law (*lex superior*) overrides low law (*lex inferior*).

About the above legal principles, it is clear that they are strongly related to the legal norm system of the Republic of Indonesia. In the legal norms system of the Republic of Indonesia, a theory called the legal norm level theory (*die theorie vom stufentordnung der rechtsnormen*) is embedded in Hans Nawiasky. In the legal norm system of the Republic of Indonesia, the prevailing legal norms are in a system that is layered and tiered as well as in groups. A norm is always applicable, sourced, and based on higher norms, and higher norms apply, originate, and are based on even higher norms and so on until a basic state norm (*staatsfundamentalnorm*) namely Pancasila (Maria Farida, 2007: 57). In the space of meaning, it is absolutely certain that Law Number 6 2014 concerning Village which organizes regulation of the village must be congruent and based on The Constitution of The State of The Republic of Indonesia of The Year 1945.

Subsequently, in contributing thoughts to K.C. Wheare, constitution contains two meanings, namely constitution in a broad sense and constitution in a narrow sense. In a broad sense, the constitution describes the entire state government system, as well as a collection of regulations that underlie, regulate, and direct the government. Second, in a narrow sense, a constitution is a set of regulations contained in a document governing the state government (K.C. Wheare, 1966: 1). This is in accordance with conveyed by C.F. Strong that “Constitution is a collection of principles according to which the power of the government, the rights of the governed, and the relations between the two are adjusted” (C.F. Strong, 1966: 15). In this regard, it implies that the constitution is the highest source of law contained in a written document that governs the state government.

In line with the above, in historical records, the Constitutional Commission of the People's Consultative Council of the Republic of Indonesia declares that the position and function of the constitution is one of the highest sources of law. In connection with this, it is clear that the Constitution of The State of The Republic of Indonesia of The Year 1945 is the highest source of law that regulates the aims and objectives of the establishment of the state. The cohesiveness of

the aspect of legal certainty contained in the content of the articles in Constitution of The State of The Republic of Indonesia of The Year 1945 becomes the central level (boundary) of state regulation including embodiment notation in the form of rules which results in the afterward legitimacy (validity of the law).

Concerning Article 22A political law (official policy direction) in the making of law is regulated by separate laws that contain basic norms in state regulation or what is called a source of legitimacy for state administration (Jimly Asshiddiqie, 2002: 33). In a philosophical expression, Satjipto Rahardjo emphasized that the process of drafting a bill must pay attention to the role of legal principles. The legal system including rules that are built without legal principles will only be in the form of a stack of laws (Satjipto Rahardjo, 2006: 140).

Another thing that is no less interesting regarding a set of regulations of the village within Law Number 6 2014 concerning Village is its relation to Article 8 section (1) of Law Number 12 2011 concerning making rules.

First, the definition of regulation of the village as rules does not include the definition of rules as referred to in Article 8 section (1) of Law Number 12 2011 concerning making rules.

Article 8 section (1) states:

Other kinds of Rules except the intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission established by Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Mayor, the Village headman or the equivalent.

Referring to the aforementioned, it is clear that there are different arrangements between Law Number 12 2011 concerning making rules and Law Number 6 2014 concerning Village regarding the regulation of the village and village headman rules. In Law Number 12 2011 concerning making rules, only village headman rules are included in the type of rules. On the other hand, in Law Number 6 2004 concerning Village only regulation of the village include rules while the village headman rules are only an implementing of regulation of the village.

When examined in depth regarding the content of Article 8 section (1) above, it is clear that grammatically, the regulation sets by the governor is governor regulation, the regulation sets by

the regent/mayor is the regent/mayor regulation, and the regulation sets by the village headman are the regulation of the village headman. So that the grammatical use of words and phrases “governor, regent/mayor, and village headman” according to the author explains the type of rules. So the conclusion that is built is that regulation of the village does not have a status as rules.

In a comprehensive meaning, governor regulation and regent/mayor regulation clearly understand for stipulated by the governor, regent or mayor. Likewise with the village headman rules set by the village headman. This means regulation by the village headman is not interpreted as regulation of the village that set by the village headman after being discussed and agreed upon with the Village Consultative Body.

Associated with the formal logic study or what is called principle logic, is known that the main task of formal logic is to formulate laws and principles (Lorens Bagus, 2000: 533). George Novack stated that the basis of formal logic is the law of identity. The law can relate in various ways such as something that is always the same as or identical to itself, in algebra: if A is equal to A. This means if the owner with Article 8 section (1) of Law Number 12 2011 concerning making rules made by the logic of the principle that regulation sets by the governor are governor regulation, the regulation stipulated by the regent/mayor is the regents/mayors regulation, and regulation stipulated by village headman is village headman rules.

Therefore, Article 8 section (1) which contains the phrase "stipulated regulation" by the Governor, Regent/Mayor, Village headman or at a level that is considered valid means that regulation stipulated separately by the Governor, Regent/Mayor, Village headman are interpreted as governor regulation, regent/ mayor regulation, and village headman rules are the types of the rules.

2. The Regulation Setting of The Village and Their Promulgation be Based on The Political Law Constitution Concerning Making Law

Undeniably that the provisions in the constitution of a state will be the source of reference or the mother for the making rules which are lower than the constitution (Nomensen Sinamo, op. Cit: 90). If understood in the context of the state administration of the Republic of Indonesia, the Constitution of The State of The Republic of Indonesia of The Year 1945 becomes the source of reference or the highest rules in the hierarchy of rules in Indonesia, so that the contents of rules is idealized according to the needs of life as a state, nation, and society for human dignity, welfare,

justice, and even the survival of the nation state (Ibid.). S.L. Witman and J.J. Wuest formally stated that the constitution and the law are the same. The difference is only based on the content of the document, so there is a distinction between “the great charters and important document” and “other important engagement” (Ibid.).

In connection with the line of thought above, it is clearly understood that the Constitution of The State of The Republic of Indonesia of The Year 1945, which is the source of reference and the highest rules that, must be followed by the lower rules, namely laws. The content of rules in the Constitution of The State of The Republic of Indonesia of The Year 1945 is clearly understood as “the great charters and important document” which absolutely must become a reference or master for the making of regulations under it.

In connection with Law Number 6 2014 concerning Village, understandably contains regulation of the village and their promulgations. The law contains provision:

Article 1 point 7

Regulation of the village is the rule set by the village headman after being discussed and agreed with Village Consultative Body.

Article 69 section (1)

The type of regulation in the village consists of regulation of the village, rules along with village headman and village headman rules.

Article 69 section (11)

Village Regulations and rules promulgated in the Gazette of the Village headman and Village News by village secretary.

Article 69 section (12)

In the implementation of village regulations referred to in section (1), the village headman set regulation village headman as the rules of procedure. From the provisions listed above, it can be understood that the types of regulation in the village consist of the regulation of the village, rules along with village headman, and village headman rules. Focusing on the above, it is obvious that the regulation of the village is rules stipulated by the village headman after being discussed and agreed upon with the Village Consultative Body. Furthermore, types of regulation of the village consist of the regulation of the village rules along village headman and village headman rules. Specifically related to regulation of the village and village headman rules, the

promulgation is carried out on Gazette of the Village Headman and Village News by village secretary.

Exploring the aforementioned provisions, it is important that the regulation of the village and their promulgation have specific in Law Number 6 2014 concerning Village. The exclusivity of the regulation setting of the village and their promulgation in this law is somewhat wrong when connected with Article 22A of the the Constitution of The State of The Republic of Indonesia of The Year 1945 “further provisions regarding the procedures for the enactment of laws shall be regulated by law”. Article 22A clearly has the meaning that the procedure for the make of laws is only formed by a separate law, namely Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. This means that matters regarding all rules which include promulgation must only be stated in Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules not in other laws, namely Law Number 6 2014 concerning Village.

In the regulatory framework concerning the promulgation of Law Number 12 2011 concerning making rules, it is emphasized:

Article 1 point 12

Promulgation is the placement of the Rules in the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette.

Article 81

For public cognizance, Rules must be promulgated by placing it in:

- a. Statute Book of the Republic of Indonesia;
- b. Supplement to Statute Book of the Republic of Indonesia;
- c. State Gazette of the Republic of Indonesia;
- d. Supplement to State Gazette of the Republic of Indonesia;
- e. Regional Book;
- f. Supplement to the Regional Book; or
- g. Regional Gazette.

Article 82

Rules are enacted in the Statute Book of the Republic of Indonesia, including:

- a. Law/Government Regulation In Lieu of Law;
- b. Government Regulation;
- c. Presidential Regulation; and
- d. Other Rules under the applicable Rules should be promulgated in the Statute Book of the Republic of Indonesia.

Article 83

Rules are promulgated in State Gazette of the Republic of Indonesia includes the Rules which according to the applicable Rules must be promulgated in the State Gazette of the Republic of Indonesia.

Article 84

- (1) Supplement to Statute Book of the Republic of Indonesia includes explanations of Rules contained in the Statute Book of the Republic of Indonesia.
- (2) Supplement to State Gazette of the Republic of Indonesia includes explanations of Rules as published in State Gazette of the Republic of Indonesia.

Article 85

Promulgation of Rules in the Statute Book of the Republic of Indonesia or the State Gazette of the Republic of Indonesia as intended in Article 82 and Article 83 implemented by the Minister who held government affairs in the field of law.

Article 86

- (1) Rules promulgated in the Regional Book are Province Regulations and Regency/Municipality Regulations.
- (2) Governor Regulations and Regent/Municipal Government Regulations are promulgated in the Regional Gazette.
- (3) The promulgation of Regulations within Regional Book and Regional Gazette as intended in section (1) and (2) conducted by the Regional Secretary.

Furthermore, Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules regulates the renewal of the promulgation in Article 85 Law Number 12 2011 concerning making rules become:

Article 85

Promulgation of Rules in the Statute Book of the Republic of Indonesia or the State Gazette of the Republic of Indonesia as intended in Article 82 and Article 83 implemented by the Minister or head of the institution that organizes government affairs in the field of making rules.

Looking at the provisions above, it is apparent that the promulgation is the placement of the Rules in the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette. The existence of the phrase “the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette” confirms that the placement of the Rules is only in the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette.

In the subsequent review, defined rules are written regulation that contain legal norms binding in general and formed or determined by a state agency or official authorized by the procedures specified in the Rules to be the first hypocentrum that needs be noticed in relation with promulgation. In simple terms, the promulgation has a main element only in the rules and promulgation is only carried out in the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette. Therefore, the term rules will always coexist with the term promulgation in the context of its formation. In another study that is no less interesting, the issue of promulgation is also interrelated with the implementation of the promulgation. In Article 85 Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules confirms that the promulgation in the Statute Book of the Republic of Indonesia or State Gazette of the Republic of Indonesia as referred to Article 82 and Article 83 is carried out by the minister or the head of the institution that organizes government affairs in the field of making rules.

Hereinafter, in article 86 section (3) Law Number 12 2011 concerning making rules confirmed that The promulgation of Regulations within Regional Book and Regional Gazette as intended in section (1) and (2) conducted by the Regional Secretary. From the two provisions above, it is clear that the implementation of the promulgation of rules is only carried out by the minister or head of the institution that organizes government affairs in the field of making rules and the regional secretary. This matter shows, the issue of implementing promulgation cannot be carried out not only by the minister or head of the institution that organizes government affairs in the field of making rules and the regional secretary based on Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. From the description above, it seems valid that the regulation of the village defined as rules along with their promulgation in the the Gazette of the Village Headman and Village News are a real mistake when linked to the provisions of promulgation in Law Number 12 2011 concerning making rules and Laws Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules.

The laws and regulations related to its promulgation should refer to Law Number 12 2011 concerning making rules and Laws Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. Next, in the dimension of a legal expert's view, Scheltema revealed that in a rule of law, the principle of legal certainty is the main reference. The most important aspects contained in the principle of legal certainty are the principles of legality, constitutionality and the rule of law (Bernard Arief Sidharta, 2004: 124-125). In line with the above view, it seems clear that the contents of rules issue contained in the constitution is a fundamental issue related to the principles that surround it. The principle of legal certainty in the form of the principles of legality, constitutionality, and the rule of law are the mouthpieces in the formation of lower levels.

Reinforcing the above, Sudargo Gautama revealed that one of the elements of a rule of law is the principle of legaliteit. The principle of legaliteit is that every state action must be based on law. Rules that have been issued beforehand constitute the limits of the state's acting power. The constitution which contains legal principles and legal regulations must be obeyed by the government or its agencies (Sudargo Gautama, 1983: 3). Thus, Article 22A which contains legal norms regarding the procedures for the making rules is regulated by law. It must be understood

that the principle of legal certainty attached to these provisions becomes the highest legal order to be embodied in rules under it.

E. Conclusion and Recommendation

1. Conclusion.

Political law and constitution provides a horizon in positioning the actual existence of law. Political law that is exposed as a legal policy regarding the law that will be implemented in the making law confirms the existence of a scientific study that is coherent with rules (basic policy). In Article 22A The Constitution of The State of The Republic of Indonesia of The Year 1945 publish “further provisions regarding the procedures for the enactment of laws shall be regulated by law”. The phrase “regulated by” has a meaning that must be regulated by a separate law. Unlike the case with the phrase “regulated in”, this phrase means that it is regulated in a law not by a separate law. This means that all matters making rules must refer to Article 22A The Constitution of The State of The Republic of Indonesia of The Year 1945. The existence of the regulation of the village as rules referred to Article 1 point 7 of Law Number 6 2014 concerning Village clearly creates a conflict with Article 22A of the The Constitution of The State of The Republic of Indonesia of The Year 1945 which was only established by a separate law. The separate law referred to is Law Number 12 2011 concerning making rules and Laws Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. Furthermore, Law Number 12 2011 concerning making rules with Law Number 6 2014 concerning Village have different intentions regarding the regulation of the village and village headman rules are included in the type of rules. On the other hand, in Law Number 6 2004 concerning Village only the regulation of the village include the rules while the village headman rules are only an implementing of regulation of the village. Next, the regulation of the village and their promulgation have specific and separate arrangements in Law Number 6 2014 concerning Village. Article 69 Section (11) states Regulation of the village and village headman rules promulgated in the Gazette of the Village Head and Village News by village secretary. The regulation setting of the village and their promulgation in the law is wrong if connected with Article 22A of the Constitution of The State of The Republic of Indonesia of The Year 1945 “further provisions regarding the procedures for the enactment of laws shall be regulated by law”. Article 22A clearly has the meaning that the procedure for making rules are

only formed by a separate law, namely Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules. This means that matters regarding all rules which include promulgation must only be stated in Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules not in other laws, namely Law Number 6 2014 concerning Village. In Law Number 12 2011 concerning making rules and Law Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules, it is clearly understood that promulgation in the Statute Book of the Republic of Indonesia, Supplement to Statute Book of the Republic of Indonesia, State Gazette of the Republic of Indonesia, Supplement to State Gazette of the Republic of Indonesia, Regional Book, Supplement to the Regional Book, or the Regional Gazette is only carried out by the minister or head of the institution that organizes government affairs in the field of making rules and the regional secretary. Thus, the regulation of the village defined as rules along with their promulgation in the the Gazette of the Village Headman and Village News are a real mistake when linked to the provisions of promulgation in Law Number 12 2011 concerning making rules and Laws Number 15 2019 concerning Amendments Law Number 12 2011 concerning making rules.

2. Recommendation.

Based on the above conclusions, for the recommendations, the authors can convey to legislators, it is very important to prioritize an understanding of The Constitution of The State of The Republic of Indonesia of The Year 1945 regarding content of rules of the procedures for making rules as ordered in the constitution. In order to realize legal certainty regarding regulation setting of the village in Law Number 6 2014 concerning Village, the authors suggest change to the content of the regulation of the village so that in line with The Constitution of The State of The Republic of Indonesia of The Year 1945.

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