

PENYELESAIAN DISHARMONISASI PERATURAN PERUNDANG-UNDANGAN MELALUI MEDIASI

Oleh :

Yulius Koling Lamanau¹, Zainal Arifin Mochtar²

INTISARI

Penelitian ini bertujuan untuk menganalisis latar belakang lahirnya Peraturan Menteri Hukum dan HAM (Permenkumham) Nomor 2 Tahun 2019 tentang Penyelesaian Disharmonisasi Peraturan Perundang-undangan Melalui Mediasi. Selain itu perlu diketahui pula apakah Kementerian Hukum dan Hak Asasi Manusia mempunyai wewenang dalam menyelesaikan disharmonisasi peraturan perundang-undangan serta bagaimana seharusnya penataan yang tepat dalam melakukan disharmonisasi peraturan perundang-undangan. Penelitian ini merupakan penelitian normatif yang lebih mengutamakan pada penggunaan data sekunder yang diperoleh melalui studi kepustakaan.

Hasil penelitian menunjukkan bahwa latar belakang lahirnya Peraturan Menteri Hukum dan HAM Nomor 02 Tahun 2019 tentang Penyelesaian Dalam Konsiderans menimbang, tidak menunjukkan landasan filosofis, dan sosiologis yang tepat. Satu-satunya latar belakang lahirnya Permenkumham *a quo* adalah berdasarkan inpres nomor 7 Tahun 2017 tentang Pengambilan, Pengawasan, dan Pengendalian Pelaksanaan Kebijakan di Tingkat Kementerian Negara dan Lembaga Pemerintah. Putusan MK Nomor 137/PUU-XIII/2015 dan Putusan MK Nomor 56/PUU-XIV/2016 juga menjadi alasan pembentukannya. Selain itu, Kementerian Hukum dan HAM berwenang melaksanakan penyelesaian disharmonisasi peraturan perundang-undangan apabila diatur dalam undang-undang, bukan dengan peraturan menteri. Penataan penyelesaian disharmonisasi peraturan perundang-undangan dapat dilakukan melalui perubahan atau pembentukan undang-undang yang memberikan kewenangan kepada menteri untuk melaksanakan penyelesaian disharmonisasi peraturan perundang-undangan. Dalam undang-undang juga harus dijelaskan hubungannya dengan pengujian peraturan perundang-undangan melalui lembaga *judicial*. Selain itu perlu diatur mengenai waktu pelaksanaan mediasi serta hasil dari mediasi peraturan perundang-undangan.

Kata kunci: Disharmonisasi peraturan perundang-undangan, Mediasi, Menteri Hukum dan HAM

¹ Mahasiswa Magister Hukum Kenegaraan, Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta

² Dosen Hukum Tata Negara, Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta

SETTLEMENT OF DISHARMONY OF LEGISLATION THROUGH MEDIATION

By :
Yulius Koling Lamanau¹, Zainal Arifin Mochtar²

ABSTRACT

This study was aimed to analyze the background of the establishment of Ministry of Law and Human Rights Regulation (Permenkumham) Number 2 of 2019 concerning Settlement of Disharmony of Legislation through Mediation. In addition, it was also necessary to know whether the Ministry of Law and Human Rights has the authority to resolve the disharmony of legislation and how appropriate arrangements should be made in the disharmony of legislation. This research was a normative research that prioritizes the use of secondary data obtained through literature studies.

The results showed that the background of the Establishment of Regulation of the Ministry of Law and Human Rights No. 02 of 2019 on Settlement in Considerations, did not show a proper philosophical, and sociological basis. The only background of the establishment of Permenkumham a quo was based on presidential decree no. 7 of 2017 concerning, Supervision, and Control of Policy Implementation at the Level of State Ministries and Government Institutions. The Decision of the Court No. 137/PUU-XIII/2015 and the Verdict of the Court No. 56/PUU-XIV/2016 are also the reasons for its formation. In addition, the Ministry of Law and Human Rights is authorized to implement the settlement of disharmony of legislation if it was regulated in law, not by Ministryial regulations. The arrangement of the settlement of disharmony of legislation can be done through changes or the establishment of laws that give authority to the Ministry to implement the settlement of disharmony legislation. The law should also be explained in relation to the testing of legislation through judicial institutions. In addition, it is necessary to regulate the timing of mediation implementation as well as the results of mediation of legislation.

Keyword : Disharmony of legislation, Mediation, Ministry of Law and Human Rights

¹ Student of State Law Master's Program, Faculty of Law, Gadjah Mada University, Yogyakarta

² Lecture of Constitutional Law, Faculty of Law, Gadjah Mada University, Yogyakarta