THE URGENCY OF IMPLEMENTING THE SUNSET CLAUSE IN THE FORMATION OF LEGISLATION IN INDONESIA TO PREVENT OVER-REGULATION

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Abstract

This research is motivated by the phenomenon of overregulation in Indonesia, which has triggered hyperregulation, overlapping regulations, sectoral egos, and legal uncertainty, hampering the national investment climate. Conventional curative regulatory arrangements, such as the omnibus law method, are deemed incapable of addressing the root cause of regulatory overcrowding from the upstream. This research aims to analyze the urgency and formulate an ideal mechanism for institutionalizing sunset clauses (automatic expiration clauses) as a preventative solution to regulatory overcrowding. The research method used is normative juridical with a statute approach and a conceptual approach. Secondary data obtained through literature review was analyzed qualitatively and deductively. The results indicate that the adoption of sunset clauses is urgently needed in the Indonesian legislative system to automatically eliminate "zombie regulations" without a lengthy bureaucratic revocation process. Ideally, the institutionalization of a sunset clause would require an amendment to Law Number 12 of 2011 concerning the Establishment of Legislation (UU P3) as the primary legal umbrella, the establishment of a validity period (5–10 years) based on the Regulatory Impact Assessment (RIA) method, and strict exceptions to fundamental laws (human rights and constitutional law) to prevent legal vacuums. In conclusion, the sunset clause is a strategic instrument for restoring parliament's oversight function while simultaneously realizing a streamlined, adaptive, and responsive legal system.

Keywords: *Sunset Clause, Legal Establishment, Over-Regulation, Legislative System.*

A. INTRODUCTION

Indonesia, as a state based on the rule of law (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, places laws and regulations as the primary instrument in governing and realizing social welfare (Simamora, 2014). Along with the dynamics of national development and demands for reform, the need for new regulations continues to increase significantly. Social change, technological developments, and the complexity of economic needs require the state to be responsive in formulating positive laws. As a result, the production of laws and their derivative regulations has become massive in order to accommodate all aspects of social, national, and state life (Rokilah, 2020).

However, this massive legal production has triggered a serious problem known as the phenomenon of over-regulation or hyper-regulation. The government and legislative institutions tend to view the creation of new regulations as the sole solution to every societal problem, without considering the existence of existing regulations (Hanum, 2021). This "legal fetishism" mindset has resulted in the number of laws and regulations in Indonesia ballooning uncontrollably. From the central to regional levels, the pile of regulations continues to grow each year, creating a confusing and interlocking legal jungle (Wijaya, 2021).

This overregulation negatively impacts legal governance and national stability, particularly through sectoral egos and overlapping regulations. Often, laws issued by one ministry contradict regulations issued by other agencies or regional governments (Salam & Hermanto, 2011). This lack of synchronization triggers institutional authority conflicts and legal uncertainty for the public and businesses. As a result, the effectiveness of the law in achieving its objectives, such as providing justice and certainty, is distorted by the complexity of the legal bureaucracy itself (Putra, 2020).

Furthermore, the economic impact of this regulatory overhang is felt sharply in the decline of Indonesia's investment competitiveness on the global stage. Investors, both domestic and foreign, frequently complain about the lengthy licensing process and contradictory provisions in various regulations, which hinder the ease of doing business (Dalla & Hutabarat, 2018). Although the government has attempted to simplify laws through the omnibus law method, this measure is deemed insufficient to fully address the root of the problem. Without a systemic upstream control mechanism, the potential for new, overlapping regulations to emerge in the future remains wide open (Prabowo, 2021).

To date, Indonesia's national legislative system lacks an automatic control instrument to independently filter or terminate the validity of laws. Conventional regulatory cleansing mechanisms, such as judicial review or legislative review, require significant political energy and time (Andiraharja, 2021). As a result, many laws that are sociologically irrelevant or legally ineffective continue to exist and are formally binding. This procedural weakness underlies the importance of a legal breakthrough that can automatically evaluate and limit the validity of regulations from the moment they are enacted (Helmi, 2021).

To overcome this legislative deadlock, the idea of implementing the sunset clause (automatic expiration clause) into the national lawmaking system has become urgent. A sunset clause is a provision within a law that explicitly stipulates that the law will cease to apply on a specific date unless the legislature actively decides to extend it (Kahirandy, 2020). This concept serves as an emergency brake to limit the scope of contemporary, experimental, or potentially interventionist legislation, thereby preventing it from burdening the legal system in the long term (Kurnia, 2017).

The implementation of sunset clauses has proven effective in several countries with modern legal systems to maintain the efficiency of their state administrations. Through this clause, parliament is constitutionally compelled to conduct periodic evaluations of a law's performance, impact, and relevance before its expiration (Rakhmindyarto, 2011). In Indonesia, this discourse has actually begun to emerge in academic discussions, but its comprehensive implementation remains hampered by the rigidity of positivistic legal thinking and the failure to adopt this clause in Law Number 12 of 2011 concerning the Formation of Legislation, as last amended by Law Number 13 of 2022 (Yanti, 2022).

Against this backdrop, this study aims to examine in depth the urgency of implementing a sunset clause in the formation of legislation in Indonesia as a preventative solution to address overregulation. Through a normative juridical analysis, this study will examine the conceptual relevance of this clause to the legal ideals of Pancasila and how to formulate a model for its institutionalization within the national legislative process. It is hoped that the results of this study will contribute constructive thinking to the improvement of the national legal system, making it more streamlined, adaptive, and responsive to current developments.

B. METHOD

This research employs a normative or doctrinal legal research method, focusing on the analysis of legal principles, vertical-horizontal synchronization, and the systematics of laws and regulations related to regulatory structure. The approaches employed in analyzing the problem include a statute approach to examine formal regulations governing legal formation in Indonesia, and a conceptual approach to analyze doctrines, norms, and the concept of sunset clauses that have developed within legal science. The legal materials used include primary legal materials, such as the 1945 Constitution of the Republic of Indonesia and the Law on the Formation of Legislation, as well as secondary legal materials sourced from relevant scientific journals, legal textbooks, and previous research reports.

The legal materials were collected through document study or library research, which involved inventorying, classifying, and documenting legal literature related to the issue of overregulation and modern legislative models. All collected legal materials were then examined for validity and relevance, then analyzed using qualitative analysis methods through deductive legal reasoning. The interpretation process was conducted systematically and teleologically to produce prescriptive conclusions regarding the urgency, formal mechanisms, and institutionalization model for implementing sunset clauses in Indonesia's national regulatory governance system.

C. RESULT AND DISCUSSION

1. The Phenomenon of Over-Regulation and Its Impact on the National Legal System in Indonesia

The legal system in Indonesia is currently in a worrying state, trapped in a vortex of hyper-regulation or over-regulation. This phenomenon is characterized by an abundance of legal products, but not matched by adequate quality, benefits, and synchronization. Based on official data from the Ministry of Law and Human Rights and the National Legal Documentation and Information Network (JDIHN), the number of regulations in force in Indonesia, ranging from laws, government regulations, presidential regulations, to regional regulations and regional head regulations, has reached tens of thousands. This uncontrolled growth in regulations reflects a dysfunction in national legislative planning, which tends to be reactive rather than strategic.

The root cause of this over-regulation stems from the mindset of policymakers who still adhere to "legal fetishism." This understanding gives rise to the mistaken belief that every social, economic, political, and cultural problem in society can only be resolved by issuing new legislation. When a contemporary issue or policy failure arises, government agencies and legislative bodies reflexively choose the pragmatic path of establishing new legal norms, rather than evaluating, optimizing, or enforcing existing ones. This impulsive pattern of lawmaking ultimately leads to a buildup of regulations over time without any periodic cleanup efforts (Apendi, 2021).

The most immediate and noticeable impact of this overregulation is the massive overlapping of regulations, both vertically and horizontally. Vertically, many implementing regulations, such as Ministerial Regulations or Regional Regulations, contain norms that expand, limit, or even contradict higher-level laws. Horizontally, sectoral egos between ministries or institutions exacerbate this situation; one ministry often issues regulations that restrict or negate the authority of another ministry in overlapping areas of affairs. As a result, the public and law enforcement officials in the field often face dilemmas due to legal antinomies or conflicting norms.

This overlapping regulation automatically undermines the essence of legal certainty as mandated by the constitution. Legal certainty implies that legal norms must be clear, consistent, predictable, and non-conflicting so that they can be complied with by legal subjects. When the regulatory jungle becomes overly dense and confusing, the law loses its predictability. The public, business actors, and even judges in court struggle to determine which rules are most appropriate and valid to apply to a specific event. This legal uncertainty, in turn, leads to distortions of justice and opens up opportunities for abuse of authority by certain officials.

In addition to undermining the order of justice, hyper-regulation also acts as a sharp obstacle hindering Indonesia's economic growth and investment competitiveness internationally. In the global Ease of Doing Business report, bureaucratic complexity and regulatory inconsistencies are consistently the primary complaints from investors. The lengthy licensing chain, spread across various levels of government due to sectoral regulatory egos, creates high transaction costs and lengthy processing times. Uncertainty over policy direction due to volatile and overlapping regulations, makes Indonesia's investment climate high-risk and less competitive than in neighboring countries.

The Indonesian government is not standing idly by and has recognized the latent dangers of this over-regulation. One of the revolutionary steps taken in recent years is the adoption of the omnibus law method in lawmaking, as applied to the clusters of job creation, health, and the development and strengthening of the financial sector. The omnibus law method has proven effective in streamlining, synchronizing, and quickly unifying hundreds of articles from dozens of different laws into a single regulatory document. This step was considered an effective instant remedy for untangling the tangled web of hyper-regulation that has persisted for years in the national legal system (Setiadi, 2020).

However, the use of the omnibus law method has proven to be no panacea that can permanently address the root causes of overregulation. The omnibus law approach tends to be curative—meaning, cleanup measures are only undertaken after the pile of regulations has already accumulated and created chaos in society. Furthermore, the extremely rapid process of drafting omnibus laws, which encompass many sectors at once, often sacrifices the principles of openness and meaningful public participation. As a result, laws produced using this method are vulnerable to challenges in the Constitutional Court and have the potential to create new legal upheavals.

Another weakness of the conventional regulatory model in Indonesia is its heavy reliance on judicial review and legislative review mechanisms. The judicial review mechanisms, through the Constitutional Court (for laws) and the Supreme Court (for regulations under laws), are passive, as the judiciary must wait for a petition from the public who believe their constitutional rights have been violated (Andiraharja, 2021). On the other hand, the conventional legislative review or revocation mechanism through the creation of new laws requires enormous political energy, takes a long time, and consumes significant budgetary resources during the deliberations between the House of Representatives (DPR) and the President.

As a result of the slow pace of these conventional regulatory overhauls, many legal products in Indonesia have experienced the phenomenon of "zombie regulations." This term refers to laws and regulations that formally exist, are valid, and are binding, but are sociologically and empirically ineffective, irrelevant, or no longer applied in practice due to changing times. The existence of these defunct regulations continues to burden the national legal database and complicate legal codification. This demonstrates that Indonesia's current legislative system lacks an upstream filtering instrument that can automatically eliminate regulations without relying on a convoluted legislative political process (Chandrangara, 2020).

Therefore, a paradigm shift is needed from curative regulatory governance to preventive-systemic governance. The Indonesian legal system can no longer simply rely on trimming regulations after the problem of overcrowding arises. Instead, it must design a system in which each new regulation is enacted with an internal control mechanism for its lifespan. Lawmakers are required to shift from the quantity of legal products to the quality of norms that are effective, efficient, and have a clear operational timeframe, especially for regulations governing highly dynamic economic sectors.

Herein lies the urgency of introducing the concept of regulatory lifespan limits, inherent from the very beginning of legal formation. Future legal regulations must adopt the principle of regulatory discipline, where a law is no longer assumed to be eternally valid or indefinitely valid, except for fundamental matters such as the state's foundations or constitutional structure.

For technical, sectoral, or experimental regulations, lifespan limits are a logical instrument to ensure that the state does not bind itself to outdated rules that hinder future progress.

This phenomenon of overregulation also has an impact on declining levels of legal compliance among the public. When the law regulates too many micro-matters to the point of non-essentiality, the authority of the law itself will decline. The public tends to ignore regulations deemed unreasonable, contradictory, or merely a tool of bureaucratic blackmail. This decline in compliance weakens social integration and undermines the legal culture envisioned in national legal development. Law, which should serve as a means of social engineering, has instead become a social burden.

Through the analytical lens of responsive legal theory, proposed by Philippe Nonet and Philip Selznick, hyper-regulation in Indonesia can be categorized as a form of repressive-bureaucratic law, prioritizing formal regulatory compliance over the effectiveness of substantive protection for the public. Responsive law should be efficient, flexible, and open to evaluation based on the real needs of the community. The failure of the national legislative system to reduce over-regulation demonstrates that Indonesian legal governance remains trapped in rigid positivistic legal formalism, which ignores the sociological aspects of legal validity.

2. The Ideal Mechanism and Institutionalization of Sunset Clauses in the Indonesian Legislative System

Institutionalizing sunset clauses (automatic expiration clauses) into the Indonesian legislative system requires a solid legal foundation. As a first step, the state cannot simply insert these clauses into sectoral laws without a primary legal framework governing the characteristics, procedures, and legal consequences of these clauses. Therefore, a strategic step must be taken to amend Law Number 12 of 2011 concerning the Formation of Legislation, as last amended by Law Number 13 of 2022 (the P3 Law). This amendment serves to legalize the existence of sunset clauses as a valid regulatory drafting technique recognized under Indonesian positive law.

In the revised P3 Law, the content of sunset clauses must be placed in the chapter governing the drafting techniques and content of legislation. This master regulation must define in a limited manner what is meant by an automatic expiration clause, the maximum permissible time limit, and the evaluation mechanism before the regulation expires. Without standardization in the P3 Law, the future application of sunset clauses is feared to be sporadic, inconsistent, and even trigger debate about the formal validity of the relevant law upon its expiration.

The ideal mechanism for implementing sunset clauses should begin at the legislative planning stage, namely in the preparation of the National Legislation Program (Prolegnas). From the outset, the academic drafting team must be able to identify whether the proposed bill (RUU) has characteristics that require an expiration limit. These characteristics include experimental regulations, regulations created to respond to specific emergency conditions, or regulations governing sectors with rapidly evolving dynamics, such as information technology, the digital economy, and macro-financial instruments.

The formulation of this expiration clause must be explicitly stated, clearly, and open to multiple interpretations in the Closing Provisions section of the relevant law. For example, the wording of an article might read: "This Law shall be in effect for a period of 5 (five) years from the date of its promulgation and shall be declared null and void by law, unless otherwise determined by the House of Representatives and the President based on the results of an evaluation." The emphasis on the phrase "invalid by law" is crucial to provide legal certainty that the binding force of the regulation will automatically lapse without the need for a new revocation instrument.

Determining the timeline for the validity of sunset laws should not be done arbitrarily but must be based on measurable scientific methods. The ideal and commonly applied timeframe in various global jurisdictions ranges from 5 (five) to 10 (ten) years. A five-year timeframe is considered particularly responsive for regulations related to technology and investment, as it provides the country with room to adapt to global disruption. Meanwhile, a ten-year timeframe can be applied to sectoral laws, which require more time to see the sociological impact of their implementation within society.

To determine whether a law should be extended or allowed to expire, a rigorous Regulatory Impact Assessment (RIA) method is required throughout its validity period. The RIA method serves as an evidence-based policy evaluation instrument to measure whether the law has achieved its initial targets, the extent of the bureaucratic costs it incurs, and whether the regulation has created new overlaps. The RIA process must be conducted transparently and involve meaningful public participation from academics, business actors, and affected communities.

Institutionally, the burden of evaluating and implementing the RIA should not be left solely to the implementing agency to avoid conflicts of interest. An independent institution or strengthening of existing institutions, such as the Ministry of Law and Human Rights (Kemenkumham) in conjunction with the Legislative Body (Baleg) of the House of Representatives (DPR), is needed to act as a regulatory oversight body. This institution will then issue objective recommendations to the President and the DPR regarding the fate of laws approaching their expiration date. If the RIA evaluation results indicate that the law is underperforming, ineffective, or actually hindering investment, the government and the House of Representatives (DPR) can simply leave it in place until its expiration date. Once that date passes, the law automatically collapses, and the national legal system is freed from a "zombie regulation." Conversely, if the law proves highly effective and is still needed, the DPR and the President can issue a short-lived extension or convert it into a permanent law through simplified legislative procedures.

It is important to emphasize that not all types of legislation can be subject to sunset clauses. Strict exceptions must be made for regulations that are fundamental to the existence and stability of the state. Laws governing human rights (HAM), the constitutional structure of the state, the judicial system, territorial sovereignty, and codified substantive criminal law (such as the Criminal Code) must be free from sunset clauses. Limiting the lifespan of the constitution or basic criminal law will create a dangerous legal vacuum and undermine the foundations of national stability.

One of the biggest challenges in institutionalizing sunset clauses in Indonesia is the potential failure of parliament to complete the evaluation before the deadline. If the House of Representatives (DPR) and the President are slow to make decisions on urgently needed legislation, there is a risk of a legal vacuum in strategic sectors. To mitigate this risk, the amended P3 Law must include an emergency provision (saving clause). This provision allows for an automatic short-term extension (e.g., six months) if parliament proves there are technical obstacles in the evaluation process.

Another challenge arises from the legal culture of the Indonesian bureaucracy, which tends to favor formalistic rigidity. The implementation of sunset clauses requires a collective mindset shift among legal drafters in ministries and institutions. They must be trained not only to be proficient in drafting new norms but also to possess expertise in predicting future policies and designing indicators of a law's success. The Ministry of Law and Human Rights plays a crucial role in providing extensive technical guidance on sunset legislation methodology.

From the perspective of separation of powers, the institutionalization of the sunset clause actually restores the true dignity and oversight function of parliament. Until now, the House of Representatives (DPR) has often been trapped in a quantitative legislative function—

that is, racing to produce as many laws as possible to meet the National Legislation Program (Prolegnas) targets. With the sunset clause, the DPR is constitutionally compelled to devote its time and energy to evaluating the effectiveness of the laws it has enacted, thereby ensuring a more balanced legislative oversight of the executive branch.

This institutionalization will also have a positive impact on state budget efficiency. The costs of conducting periodic evaluations through the sunset clause mechanism are far less than the social and economic costs the state must bear from maintaining defective regulations and hindering investment for years. The streamlined number of regulations will also ease the workload of the clerks at the Supreme Court and the Constitutional Court, as the potential for disputes resulting from overlapping regulations at the downstream level will be drastically reduced.

D. CONCLUSION

Based on the research findings outlined above, two main conclusions can be drawn. First, the phenomenon of over-regulation in Indonesia has reached an alarming stage, characterized by hyper-regulation that triggers overlapping regulations, sectoral egos, and legal uncertainty that are detrimental to the national investment climate. Conventional curative regulatory mechanisms, such as the omnibus law method and judicial review, have proven incapable of addressing the root cause of the systemic buildup of regulations because they lack automatic control instruments from the upstream legal process. Therefore, the implementation of sunset clauses (automatic expiration clauses) is highly urgent as a preventative solution to force the periodic elimination of irrelevant or ineffective regulations in order to achieve streamlined and adaptive regulatory governance. Second, the ideal mechanism for institutionalizing sunset clauses in the Indonesian legislative system must begin with an amendment to Law Number 12 of 2011 concerning the Formation of Legislation (UU P3). This master regulation must include standardized clause drafting techniques, a maximum time limit (ideally 5 to 10 years), and the integration of a rigorous and participatory Regulatory Impact Assessment (RIA) method. In addition, this institutionalization requires strengthening the function of the Ministry of Law and Human Rights together with the House of Representatives Legislative Body as an independent supervisory authority, while still providing strict exceptions to fundamental laws (such as human rights, basic criminal law, and state structure) to prevent the occurrence of legal vacuums that endanger the stability of the state.

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