

Legal Reconstruction of the Multi-Stakeholder Union Model Regulation Based on Pancasila Justice Value

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Abstract

This study aims to criticize the legal construction of multi-stakeholder unions which are not in line with the principles of Pancasila justice. From this critical study, new theories/ideas were generated regarding the system and arrangement of multi-stakeholder unions that are just Pancasila through the reconstruction of Ministerial Regulation no. 08 of 2021 concerning Unions with a Multi-Stakeholder Model using a constructivism paradigm with a normative juridical approach. This type of research is descriptive qualitative. This study uses 4 problem approaches, namely the statute approach, the historical case approach, the comparative approach to law, and the conceptual approach. The legal materials used in this research are primary legal materials and secondary legal materials with data collection methods through library research. Data analysis in this study used qualitative analysis. The results show that the legal construction of multi-stakeholder unions in Indonesia is not in line with the values and principles of Pancasila justice as There is a principle discrepancy between the substance or legal norms of the Regulation of the Minister of Union and Small and Micro Enterprises (PERMENKUKM) no. 08/2021 with the principle of kinship in the 1945 Constitution of the Republic of Indonesia, there is also conflicting legal substances or norms between the lower regulation (PERMENKUKM No. 08/2021) and the higher regulation (Law No. 25/1992 and the Job Creation Law). Then, The existence of material content or legal norms PERMENKUKM No. 08/2021 which exceeds the material limit of a ministerial regulation regulated in Law No. 12/2011 and Law no. 15/2019. Based on this, it is necessary to reconstruct a number of norms in Ministerial Regulation no. 08 of 2021 concerning Unions with a Multi-Stakeholder Model, reconstruction of legal structures or institutions is needed in the form of increasing the ability and understanding of the Ministry of Unions and Small and Medium Enterprises towards Unions and reconstruction of legal culture in the community and union managers.

Keywords: Legal Reconstruction, Multi-Stakeholder, Union Model, Justice Value.

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INTRODUCTION

To support the development of unions in Indonesia, the Government issued Government Regulation No. 07 of 2021 concerning Ease, Protection, and Empowerment of unions and Business, Micro, Small, and Medium Enterprises, State Gazette of the Republic of Indonesia of 2021 Number 17, dated February 2, 2021. This Government Regulation is structured as a follow-up to the Employment Creation Act. Other things that underlie and encourage the need for clearer regulations related to unions, Micro, Small, and Medium Enterprises, among others, are that regulations relating to the convenience, protection, and empowerment of unions, Micro, Small, and Medium Enterprises, which are spread across various laws and

regulations, Current legislation has not been able to meet the legal needs for the acceleration of work created and has not been integrated so that changes need to be made (Widodo, 2019).

This Government Regulation in light of this, only regulates, among other things:

- a) Ease, protection, and empowerment of unions;
- b) Ease, protection, and empowerment of Micro, Small, and Medium Enterprises;
- c) Implementation of incubation; and a special allocation fund for the facilitation, protection, and empowerment of unions, Micro, Small, and Medium Enterprises.

On October 21, 2021, Teten Masduki as Minister of Unions and Small and Medium Enterprises of the Republic of Indonesia (hereinafter referred to as the Minister of KUKM), stipulates Regulation of the Minister of unions and Small and Medium Enterprises No. 08 of 2021 concerning unions with a Multi-Stakeholder Model (hereinafter referred to as PERMENKUKM No. 08/2021).

In considering it, it is said that unions need to further develop themselves and be built to be strong, healthy, independent, modern, and competitive based on union principles and support micro, small, and medium enterprises and entrepreneurship so that they are able to act as pillars of the national economy. That in order to realize this goal, the Ministry of unions and Small and Medium Enterprises needs to develop modern unions through the implementation of a multi-stakeholder model that involves the interests of all parties, is able to increase access to capital, information, skills, is more open to innovation and is more flexible, according to the needs and the development of the global economy, it is necessary to establish regulations (Suwandi, 2012).

Unions play an important role in the Indonesian economy, however, the number of active Unions (units) in Indonesia continues to decline from year to year except in 2017 which increased. The number of active Union members (people) has increased by an average of 37.98% from 11,842,415 people in 2016 increasing to 22,463,738 people in 2019 (Humas KUHUM, 2021).

The number of Unions that have a Certificate of Union Identification Number (NIK) continues to increase, and more and more unions have a NIK Certificate. In relation to this, Article 17 paragraph (1) Permen KUKM No. 10 of 2016 states that Controlling union business activities is needed in order to increase public and stakeholder trust in union business activities and to Facilitate service. The ease of service is felt in terms of the need for information about the quality and capabilities of the Union.

Unions, Micro, Small, and Medium Enterprises are one of the pillars of the people's economic strength that are able to expand employment opportunities and play a role in equitable distribution and increase people's income, encourage economic growth, and realize national stability. Considering the importance of Unions, Micro, Small, and Medium Enterprises in the national economy, they must obtain political and economic alignments that provide more convenience, support, protection, and empowerment.

Union development needs to be directed so that it plays an increasingly important role in the national economy. Its development is directed so that Unions truly apply union principles and economic

business principles. Thus the Union will be an economic organization that is stable, democratic, autonomous, participatory, and has a social character. Union development is basically intended to encourage Unions to carry out business activities and play a major role in the economic life of the people.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of The Multi-Stakeholder Union Model Regulation Based On Pancasila Justice Value*" where the main problem discussed in this article is as follows:

1. What Are The Weaknesses In The Current Multi-Stakeholder Union Model Regulation In Indonesia Currently?
2. How is The Legal Reconstruction Of The Multi-Stakeholder Union Model Regulation Based On Pancasila Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out

by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses in the Current Multi-Stakeholder Union Model Regulation in Indonesia Currently

Terminologically speaking, what is meant by KMP is a union with a model of grouping members based on the role of groups of member parties in a certain business scope that is adjusted to the similarity of economic interests, business linkages, potential, and needs of members contained in Article 1 number 2 PERMENKUKM no. 08/2021, while the member stakeholder group is a collection of union members grouped into one stakeholder that has a role in a certain business scope (Article 1 point 3 PERMENKUKM No. 08/2021). The definition of a multi-stakeholder union is found in the general provisions section, where these provisions will underlie the regulations/ articles that follow.

When it was established, the Multi-Stakeholder Union consisted of at least 2 (two) Member Stakeholder Groups (Article 3 paragraph 1 PERMENKUKM No. 08/2021). The membership of the Multi-Stakeholder Union is carried out in accordance with the provisions of the legislation. Group of Parties Members are grouped based on (Article 4 PERMENKUKM No. 08/2021) according to the similarity of economic interests, business linkages, potential; and/or member needs.

This grouping of union members is basically contrary to union principles such as the kinship principle (Article 2 of Law No. 25/1992). Like a family, union members should not be differentiated or grouped into a group but must be a unit and receive the same treatment without any differences and groupings.

In Regard to the union principle, states that membership is open, which means that membership is not restricted or discriminated against in any form. (Article 5 Paragraph 1 Letter a Law No. 25/1992). With the division or grouping of union members, of course, it creates certain limitations and discrimination against members of unions, especially between members of unions in one group against members of other union groups. Then, regarding the rights and obligations of union members, each member has the same obligations and rights to unions as stipulated in the Articles of Association. (Article 19 Paragraph 4 of Law No. 25/1992). When there is a division of groups, of course, it will also distinguish the rights and obligations of union members based on their respective groups of members. This of course can cause social jealousy among its own members.

Considering that a union is an association of people, not a money association, the rights and obligations of members here must be the same and should not be discriminated against. The rights of union members, are that every member of the union has the right to use the union and receive the same services between members. (Article 20 paragraph 2 Letter e of Law No. 25/1992). When they are in a smaller group or certain groups that are considered to have the least impact, the members of the union group get the least portion of rights compared to the group of members who are considered to have more portion or position. This is what makes differences in rights between union members that are not in accordance with the legal ideals of Indonesian unions.

Members are owners and service users who are very interested in the business run by the Union, so the participation of members also means developing the Union's business. This is also in line with the rights of members to use and receive services from their unions. Members are the determining factor in the life of the Union, therefore it is important for members to develop and maintain togetherness. (Explanation of Article 20 of Law No. 25/1992). When the participation of union members is regulated based on their respective groups of members, this is what creates injustice, because basically, union members are simultaneously owners of unions where he has an interest that must be prioritized for the progress of their union.

In contrast to the general provisions of PERMENKUKM No. 08/2021 with the above regulations, namely Law no. 25/1992, the Employment Creation Act, and the 1945 Constitution of the Republic of Indonesia because they are related to philosophy and underlie the regulations/ articles that follow, of course, will have an impact on the regulations/ articles that follow, thus causing a complete injustice to regulation and must be canceled in its entirety. As with violations of general provisions in Law no. 17/2012 which led to the cancellation of the entire regulation by the Constitutional Court.

Multi-stakeholder Unions adds another new form of unions apart from primary and secondary unions as already stated in Article 6 of Law no. 25/1992. This can be seen in the regulation of the form of primary unions or secondary unions, which can take the form of multi-stakeholder unions (Article 2 PERMENKUKM No. 08/2021). Especially when primary unions or secondary unions that want to become multi-stakeholder unions must adhere to Article 5 of PERMENKUKM No. 08/2021. Then, to become a multi-stakeholder union. It should be added that in naming the name of a multi-stakeholder union there is an additional phrase, Naming for a Multi-stakeholder Union contains the phrase "Multi-stakeholder" after the phrase "Union" and the type of Union. In the event that a Multi-Stakeholder Union begins as a Secondary

Union, the name for a Multi-Stakeholder Union ends with the abbreviation "(Skd)". The application for the name of the Union is carried out in accordance with the provisions of the legislation (Article 6 PERMENKUMKM No. 08/2021).

The injustice of the formation of this new form of union is contrary to Article 15 of Law no. 25/1992 which states that unions can be in the form of Primary Unions or Secondary Unions. In this case, the union is only recognized in two forms. When there is a new form of union in the PERMENKUMKM material No. 08/2021 then of course this is an overreach of authority because it adds what was not previously regulated by the above regulations. The material for ministerial regulations should only contain what is ordered by law or in accordance with their authority (Article 17 of Law 30/2014).

The next injustice is that in multi-stakeholder unions, member meetings are held in stages, consisting of groups of member parties; and Plenary. The meeting of members of the group of members is attended by members of one group of members who are recorded in the list of members (Nurhasanah, 2016). Each member in a meeting of stakeholder group members has one voting right, and his presence cannot be represented. The plenary member meeting is attended by representatives from each group of member parties. Each group of member parties present at the plenary session has the right to vote. Voting rights are regulated in the articles of association and/or by-laws. Requirements, powers, procedures, as well as the proportion of votes and group representatives at Member Meetings, and extraordinary Member Meetings are regulated in the Articles of Association and/or Bylaws.

This tiered member meeting is contrary to the union principle, related to the principle of democracy and the principle of independence, where the existence of democratic principles shows that the management of unions is carried out based on the will and decisions of the members. It is the members who hold and exercise the highest power in the Union. The principle of independence implies being able to stand alone, without depending on other parties based on trust in their own considerations, decisions, abilities, and efforts. Independence also includes the notion of responsible freedom, autonomy, self-reliance, courage to take responsibility for one's own actions, and the will to manage oneself. (Article 5 Paragraph 1 Letter b and e of Law No. 25/1992). This injustice to the implementation of the union principle by PERMENKUMKM illustrates where the direction of the multi-stakeholder union arrangement is different from the Indonesian union principle which is based on the legal ideals of the Indonesian nation. Where the principles in the regulation should be one of the starting points of all related rules under it. Not only imitating or imitating

rules that are outside Indonesia but leaving the principles that should be the basic reference. When the principles of Indonesian unions have been abandoned, of course, they will find a different path/ direction from the original goal of cooperating with the legal ideals of the Indonesian nation.

By holding a tiered meeting, the rights of each member to attend, express opinions, and vote in member meetings cannot be implemented. Because members in multi-stakeholder unions can only express their opinions at group meetings of member parties and are indirectly conveyed by representatives at plenary meetings. Injustice to the rights of members is a violation of the most basic things in unions. Unions are associations of people, not capital associations so the role of members as owners of unions is very large in determining the direction and policies of unions through member meetings (Wijaya, 2022).

By holding member meetings in stages, it means that only a part of the members of the union will elect the management and supervisors. The Injustice arises when the rights of union members who should be entitled to participate in elections and are elected in member meetings to become administrators and supervisors cannot be implemented when there is a tiering of members' meetings therefore there needs to be a reconstruction to its law.

2. Legal Reconstruction of the Multi-Stakeholder Union Model Regulation Based On Pancasila Justice Value

The incompatibility of legal norms between lower and higher regulations (norm conflict) causes injustice in the arrangement of multi-stakeholder unions. Indonesia, which has its own legal ideals, namely Pancasila, should all lines in its legal system be in accordance with and in line with its own legal ideals. Therefore, the reconstruction of norms/rules in PERMENKUMKM No. 08/2021 can be divided into four, firstly related to the arrangement for grouping union members as regulated in Article 1 paragraphs 2 and 3, Article 3 paragraph 2 and Article 4 paragraph 2, this reconstruction is needed because if seeing from the background of the creation of unions that come from weak economic groups with the aim of prospering members, they will experience difficulties when they have to cooperate in a new business entity with other business entities with different backgrounds and objectives, it will be better and easier when cooperation within a business entity is carried out with business entities that have the same goal.

Basically, all members of Indonesian unions are one unit as well as one family, which is why the principle of Indonesian unions is kinship as regulated in (Article 2 of Law No. There should be no distinction of rights and obligations towards all members of the union (Article 19 Paragraph 4, Article 20 and Article 20

Paragraph 2 Letter e of Law No.25/1992). When people want to develop unions towards better and/or business efficiency, then existing unions can work together (Article 5 Paragraph 2 Letter b of Law No. 25/1992) to form new unions, namely through the establishment of secondary unions (Article 14 of Law no. 25/1992) while still applying the principles of Indonesian unions so as to create justice based on Pancasila. In Indonesia, in the formation of secondary unions, there are no restrictions on the type of business that can carry out or group certain sectors for its establishment, in contrast to the establishment of multi-stakeholder unions abroad which divide into certain sectors or types of business.

Second, related to legal reconstruction in the form of additional forms of unions regulated in Articles 2 and 6 paragraphs 1 and 2 because the Minister of KUKM as assistant to the President in accordance with Article 17 of the 1945 Constitution of the Republic of Indonesia should issue regulations in accordance with the material of the regulations and not conflict with the existing regulations above (Article 17 of the 1945 Constitution of the Republic of Indonesia). 5, 6, 7, 8 and 9 of Law No. 12/2011) and does not exceed its authority (Article 17 of Law No. 30/2014), in this case, the Minister of KUKM issued PERMENKUKM No. 08/2021 which aims to modernize unions and accommodate the development of an era where diversity in the field of business and the increase in information technology systems by creating a new form of multi-stakeholder union. The Minister should have studied and developed more related to the regulation of secondary unions in Indonesia. Due to the norms/rules related to the grouping of union members, tiered member meetings, and the indirect election of management and supervisors as regulated in PERMENKUKM No. 08/2021 can be implemented through the establishment of a secondary union regulated in Law no. 25/1992 and the Job Creation Law, which does not conflict with the ideals of Indonesian law, namely Pancasila justice and no special regulation is needed. So that the goals of modernization of Indonesian unions can be achieved and the welfare of union members in particular and society in general, the regulations regarding the addition of new forms of unions in PERMENKUKM No 08/2021 in Articles 2 and 6 must be removed.

Third, related to the tiered decision-making in member meetings consisting of groups of members and plenary parties as regulated in Article 9 paragraphs 3,4,5,6,7 and 10. Indonesian Unions have democratic principles and the principle of independence (Article 5 Paragraph 1 Letter b and e Law No. 25/1992), as well as the right of members to attend, express opinions, and vote in Member Meetings (Article 20 Paragraph 2 Letter a Law No. 25/1992) where the decisions of member meetings must be taken based on deliberation to reach a consensus. The term consensus first is needed, because this is one of the characteristics of the

Indonesian nation in accordance with the fourth precepts of Pancasila (Article 24 of Law No. 25/1992). The arrangement of voting rights in member meetings in multi-stakeholder unions in Italy and Quebec is to give an equal portion, that is, one member has one vote but differs from France with a percentage system with a maximum of 50% of the total voting rights that may be owned by one group. In Indonesia, voting rights in secondary unions can be regulated in the Articles of Association by considering the number of members and business services of member-unions in a balanced manner (what is meant by considering the number of members and business services of member-unions in a balanced manner is that the determination of voting rights is carried out by standing with the number of members each member-union and the size of the member union's business services to its Secondary Union) (Wijaya, 2022) in accordance with Article 24 Paragraph 4 of Law no. 25/1992. It is necessary to limit the maximum percentage of voting rights in secondary union member meetings by 50% of the total number of voting rights that may be owned by Member Unions as well as voting restrictions in multi-stakeholder union member meetings in France so that there is no monopoly or majority control by one of the member unions.

Fourth, regarding the indirect election of Union Management and Supervisors Article 10 paragraph 1, and Article 11 paragraphs 1 and 2. One of the rights of union members in Indonesia is that every member of a union has the right to elect and/or be elected as a member of the Management or Supervisory Board (Article 20 Paragraph 2 Letter b Law No. 25/1992). In its arrangement, the management of the union is elected from and by the members of the union in the members' meeting (Article 29 Paragraph 1 of Law No. 25/1992). Union supervisors are elected from and by members of the Union at the Members' Meeting (Article 38 paragraph 1 of Law No. 25/1992).

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The injustice of a multi-stakeholder Union occurs because of weaknesses in the regulation can be seen from the grouping of Union members (Article 1 Numbers 2 and 3, Article 3 Paragraph 2 and Article 4 Paragraph 2), the addition of the form Union in Indonesia (Article 2 and Article 6 paragraphs 1 and 2), tiered decision making in member meetings (Article 9 Paragraph 3, 4, 5, 6, 7, and 10) and indirect election of Union management and supervisors (Article 10 Paragraph 1 and Article 11 Paragraph 1 and 2). This resulted in a principle discrepancy with the substance or legal norms of PERMENKUKM No. 08/2021 with the principle of kinship in the 1945 Constitution of the Republic of Indonesia, the

existence of conflicting legal substances or norms between the lower regulations (PERMENKUKM No. 08/2021) and higher regulations (Law No. 25/1992 and the Job Creation Law) and the existence of material content or legal norms PERMENKUKM no. 08/2021 which exceeds the material limit of a ministerial regulation regulated in Law No. 12/2011 and Law no. 15/2019.

2. To address this weakness, it is necessary to carry out a legal reconstruction, specifically to PERMENKUKM No. 08/2021 regarding the multi-stakeholder union members (Article 1 Numbers 2 and 3, Article 3 Paragraph 2 and Article 4 Paragraph 2), tiered decision making at member meetings (Article 9 Paragraph 3, 4, 5, 6, 7, and 10), and indirect election of management and supervisors (Article 10 Paragraph 1 and Article 11 Paragraph 1 and Removing Articles 2 and 6 Paragraphs (1) and (2) PERMENKUKM No.08/2021 regarding the addition of union forms and Optimizing the principle of union between the primary union and secondary union in order to be a solution in the development of modernization of union in accordance with the principles and ideals of the Indonesian nation's union.

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