

# **Law-making Process in Indonesia**

## **An Analysis On the National Legislation Program (Prolegnas)**

by  
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### **Background**

Indonesia is the largest archipelago country in the world that consists of five large islands: Sumatra, Java, Kalimantan (Borneo), Sulawesi (Celebes), and Papua and some 18.000 smaller islands. The distance from Sabang district, a city in the most north-western top of Aceh on Sumatra to Merauke district, the most eastern border with Papua New Guinea is approximately 4,000 km. Most of its population, approximately 140 million live on Java, the smallest of large islands, which makes the island of 132,000 km<sup>2</sup> one of the most densely populated areas in the world. The population is consisted by thousands many diverse ethnicities, cultures, traditions, linguistic and religious groups.

The fact that Indonesia is one of the most socio-culturally diverse countries in the world is reflected by the symbol of Indonesia motto: unity in diversity. Therefore, the founding father of Indonesia declared Indonesia as the Unitary State of the Republic of Indonesia (Negara Kesatuan Republik Indonesia/NKRI). The Indonesian government is divided into three levels of administrations namely the Central Government, the Provincial Government and the Municipal/Regency Government. The Central Government, Provincial Government, Municipal/Regency Government is led by an elected president, an elected governor, and an elected regent/mayor, respectively. Every 5 years, the president, the governor and the regent/mayor are elected through the national, provincial and municipal/regency direct election.

Indonesia is a Civil Law country which intermixes with legacy of the Dutch colonial period of law, customary law and Islamic law. Whereas the legal system mainly derived from

the Netherland that had colonized Indonesia over 350 years until the end of the World War II, currently Indonesia has adopted many Common Law values in the enactment of many current laws and regulation, especially those are related to economic legal activities.

During the Soeharto regime (1968-1998), Indonesia had adopted the unicameral system in which the People's Representative Council (Dewan Perwakilan Rakyat/DPR), which was consisted of the elected political party members through the General Election and the appointed military representative, was the only institution that had the legislative power. The MPR (People Consultative Assembly), which was the supreme governing institution, consisted of DPR's members, regional representatives, who are elected by provincial legislatures, and the appointed representatives from social and functional groups and organizations in Indonesia. MPR had very strong political roles since it had a right to appoint and dismiss President. Consequently, the appointed President was responsible to the MPR and it had to report its performance of the administration directly to the MPR. MPR could also ask for the extraordinary session if the President violated the 1945 Constitution.

After the amendment of the 1945 Constitution from 1999-2002, a new chamber, the Regional Representative Council (Dewan Perwakilan Daerah/DPD), was established and since then, Indonesia adopted a kind of the "soft bicameral system". MPR, which previously was the supreme institution, is retained but for significantly different functions. MPR is currently a kind of joint session between DPR and DPD that consists of the members of DPR and DPD. The ultimate task of MPR<sup>1</sup> is to amend the 1945 Constitution. MPR also has constitutional authorities to inaugurate and oversee the President, and to convene an "impeachment session" to remove the President from office, if the President violates the 1945 Constitution. The

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<sup>1</sup>Article 3(1) of the Third Amendment the 1945 Constitution

significant different is that MPR does not retain its role to appoint President. The President of the Republic of Indonesia is an elected President through the Direct Presidential Election in which Indonesian people directly give their vote.

There are at least three important backgrounds why the DPD is established. The first is historical background on which DPD is a new form of the appointed regional representatives (Utusan Golongan) of the previous MPR. The second is the need of regional aspirations who did not feel that they are fully represented by the elected legislature from political parties. The third is the change of Indonesian development policy from centralization towards decentralization.

During the period of the Soeharto's regime, over 32 years, the development policies were decided and centralized in the capital city of Jakarta which created an obvious Centralized Government bias. Consequently, the center area of the country's development was mainly in Java Island even though many national income sources of the Government came from many other rich regions/provinces of Indonesia that have a huge deposit of oils, natural gas, mines, forest and other natural resources.

After the amendment of the 1945 Constitution, the DPR is not the only institution that has an authority to make legislation. The DPD, which is a newly established council, has also an authority to propose bills even though only in the limited areas of development. DPR has 560 members who are elected through the Legislative Election while the DPD has 132 members who are also elected from the same election. Whereas DPR's members consist of political party representatives, DPD is a non-political party representative, which is intended to represent regional's interest from the provincial region.

Furthermore, the President (Executive Branch) also has an authority to make and propose bills. The bills are drafted and prepared by the ministries or government agencies that are responsible on certain tasks and obligations. The President mostly appoints the Ministry of Laws and Human Rights (MLHR) to coordinate the bills and laws making process.

Each Regional Government, either Provincial Government or Municipal/Regency Government, has their own legislature in which all of the members are elected in the Regional Legislative Election. In order to promulgate a regional regulation, the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah/DPRD) must work along with the governor, mayor or regent of the Regional Government (Regional Executive Branch).

### **Legislative Power in Indonesia**

The Indonesian legal system is arranged in the hierarchy that is currently regulated by Law No. 10 Year 2004 concerning Formation of Laws and Regulations. Article 7 (1) of the Law describes the hierarchy as follow:

1. The 1945 Constitution (UUD 1945)
2. Law (Undang-Undang/UU) and Government Regulation in Lieu of Law (PERPU)
3. Government Regulation (Peraturan Pemerintah/PP)
4. Presidential Regulation (Peraturan Presiden/Perpres)
5. Regional Regulation (Peraturan Daerah/Perda)

The 1945 Constitution grants the legislative power towards three constitutional bodies namely DPR, DPD and the President (Executive Branch) in the Central Government, and the Regional Government (Regional Executive Branch) and DPRD (Regional Legislature) in the Regional Government. However, DPR has the main roles of legislative process. Therefore,

the credibility of DPR, which is strongly affected by various interests of political parties and the diverse quality of DPR members, determines the quantity and quality of legislation.

DPR consist of several factions of political parties that fulfill the Parliamentary Threshold (PT) in the Legislative Election. Currently there are nine DPR factions, namely Democrat Faction, GOLKAR Faction, PDIP Faction, PKS Faction, PAN Faction, PPP Faction, PKB Faction, Gerindra Faction and Hanura Faction. In order to implement their responsibility and legislative function, The DPR establishes 11 (eleven) Committees along with the field of duties as follow:

1. Committee I (Defense, Foreign and Information Affairs)
2. Committee II (Home Affairs, Regional Autonomy, Administrative Reforms and Agrarian Affairs)
3. Committee III (Law and Legislation, Human Rights, and Security Affairs)
4. Committee IV (Agricultural, Plantations, Forestry, Maritime, Fisheries, and Food Affairs)
5. Committee V (Communications, Telecommunications, Public Works, Public Housing Affairs, Acceleration of Development of Disadvantaged Regions)
6. Committee VI (Trade, Industrial, Investment, Cooperatives and Small and Medium Scale Enterprises, and State-Owned Enterprises Affairs)
7. Committee VII (Energy, Mineral Resources, Research and Technology, Environmental Affairs) Committee VIII (Religious, Social, and Women's Empowerment Affairs)
8. Committee IX (Demography, Health, Manpower and Transmigration Affairs)

9. Committee X (Education, Youth, Sport, Tourism, Arts and Culture Affairs)
10. Committee XI (Finance, National Development Planning Board, Banking and Non-Bank Financial Institutions Affairs)<sup>2</sup>.

Those Committees have counterpart from the Executive Branch with which to work. Each Committee has different counterpart which is determined by the field of work on which the committee are assigned. For instance, the Committee X, which is responsible in the field of education, works with the Ministry of Education. At anytime, the Committee could invite the Education Minister to report particular information or policy concerning educational issues.

DPR has three main responsibilities, namely legislative function, budgetary function, and administrative function. In order to implement the legislative functions, DPR establishes the legislation council, which has several tasks as follow:

1. to prepare the national legislation program which includes the list of bills for one term of office of the DPR and priorities for each Budgetary Year;
2. to prepare Bills initiated by the DPR on the basis of specified priority programs;
3. to harmonize, finalization and consolidation of conceptual Bills presented by Members, Committees, or Joint Committees, prior to delivery to the Leadership of the DPR,
4. to hold deliberations on, amendment/ improvement Bills which are specifically assigned by the Steering Committee<sup>3</sup>.

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<sup>2</sup>See Number of Committee and Their Counterparts Ministries and Agencies at <http://www.dpr.go.id/en/komisi> Retrieved June 9, 2010

<sup>3</sup>See the Function of Legislation Council (Badan Legislasi) at <http://www.dpr.go.id/en/baleg> Retrieved June 9, 2010

Each member of DPR who is elected through the Legislative Election<sup>4</sup> has the right to draft and propose bills, and an authority to enact laws<sup>5</sup>. The bills that are proposed by the DPR's members must be delivered and deliberated within the government (Executive Branch)<sup>6</sup>. This process is intended to harmonize the bills with other related existing bills that might conflict each other. Since the Executive Branch will execute any mandates written in the bills, all the proposed bills from DPR must be clearly understood and can be implemented by the Ministries or other government institutions. The Ministry of Law and Human Rights (MLHR) is mainly the coordinator of the Inter-Ministerial or Inter-Governmental institutional meetings in order to respond the proposed bills from DPR.

DPD, which has only a very limited legislation power, has unique roles in the legislative process. The members of DPD have an authority to propose bills pertaining with the following seven decentralization policy issues: regional autonomy issues, a relation between central and regional government, formation, expansion and merger of adjacent regions, natural and other economic resources management, the financial balances between the Central Government and Regional Government, and to provide considerations toward DPR regarding national budget and bills pertaining with tax, education and religion<sup>7</sup>. However, in the implementation of the mandate of the Constitution which was also regulated in Law No 22 Year 2003, DPD felt that DPR did not respect the role. For instance, when DPR decided the National Legislation Program (Prolegnas) 2005-2009, DPD was not asked for considerations concerning the priorities of bills that were finally selected in the Prolegnas.

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<sup>4</sup>Id. Article 19 (1) of The Second Amendment of the 1945 Constitution

<sup>5</sup>Id. Article 20 (1) of the First Amendment of the 1945 Constitution

<sup>6</sup>Id. Article 20 (2)

<sup>7</sup>Article 22 (D) (1).(2) (3) The Third Amendment of the 1945 Constitution

According to DPD, there were 90 proposed bills from DPD which only 17 bills of which were included in the Prolegnas. Furthermore, the 17 bills were not put in the annual priority of 2005<sup>8</sup>. Following the enactment of Law No. 27 Year 2009 Concerning MPR, DPR, DPD and DPRD, which replaced Law No 22 Year 2003, speaker of DPD, Irman Gusman, says that DPD will be actively involve discusson regarding substantive matters of bills. His statement is based upon Article 224 (1) (i) Law No 27/2009 that stipulates an authorities of DPD to develop and arrange The National Legislation Program (Prolegnas) pertaining with seven aspects decentralization policies<sup>9</sup>.

The President, who represents the government (Executive Branch), has an authority to draft and propose bills, which are prepared by the ministries and non-ministries institutions or government agencies (Lembaga Pemerintah Non Departemen/LPND). The Minsitry of Law and Human Rights is responsible to coordinate the bills and laws making by organizing the Inter-Ministerial meeting or Inter-Governmental agency meeting. The meeting is very important to harmonize the bills in a relation with the existing laws and regulations from different ministries or government agencies. The bills, which are already approved by the meeting, will subsequently deliver to the President for approval and will be delivering to DPR for coordination.

Furthermore, The President also entitles to issue government regulations which are derived from particular laws<sup>10</sup>. The government regulation is mainly intended to provide a detailed implementing regulation of enacted laws. In addition the President can also issues the

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<sup>8</sup>See DPD Protests Prolegnas 2005-2009 at <http://us.detiknews.com/read/2005/02/03/161107/284567/10/dpd-protos-prolegnas-2005-2009?browse=frommobile> Retrieved June 9, 2010

<sup>9</sup>See DPD is optimist to have more roles in Prolegnas <http://www.mediaindonesia.com/cetak/2010/04/04/134553/3/1/DPD-Optimistis-Lebih-Berperan-di-Prolegnas.html> Retrieved May 25, 2010

<sup>10</sup>Article 5 (1)(2). The 1945 Constitution.

Presidential Regulation to implement laws or government regulations. There are no clear differences between the Government Regulation and Presidential Regulation since both of them can provide an implementing regulations of laws.

In case of emergency, the President shall have an authority to issue the government regulation in lieu of laws (Peraturan Pemerintah Pengganti Undang-Undang/PERPU). However, the government regulation shall obtain approval from DPR, otherwise, the regulation is not valid and must be revoked<sup>11</sup>. This explains the fact that all exigency situations are not always perceived in the same understanding by DPR and Executive Branch. Therefore, the public debates on the exigency issues are very important to make the public aware which interpretation of the exigency is more accurate between DPR and the Executive Branch.

### **The Prolegnas: An Instrument of Planning**

The National Legislation Program (Prolegnas) is an instrument of planning of law formation program that is arranged by planned, integrative, and systematic manner<sup>12</sup>. Therefore, the planning of law making in Indonesia must be put and begun from a frame of work of Prolegnas<sup>13</sup>. According to elucidation of Article 15 of the Law, the Prolegnas provides a planned law development that is based upon the development priorities and periods of planning and it is determined only for the Central Government.<sup>14</sup>

The Prolegnas consists of explanation and information regarding law formation program and main substances of bills that are proposed to be enacted. The main substances

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<sup>11</sup>Article 22D (1)(2)(3) of The Second Amendment of the 1945 Constitution

<sup>12</sup>See Article 1 (9) Law No. 10 Year 2004 Concerning Formation of Laws and Regulations.

<sup>13</sup>Id Article 15 (1)

<sup>14</sup>Elucidation of Article 15 of Law No. 10/2004

must cover several important aspects of bills that are composed by the title, background and objective of the proposed bills, the goals that will be attained, main ideas of proposed bills, scope and regulated object, and scale and direction of regulation<sup>15</sup>. It means that the proposed bills are not necessarily bills that are completely described the content of the bills along with articles and other necessary documents and explanations. It is a kind of proposal of bill that describes basic information of a bill. However, some of the proposed bills are complete bills along with full contents and their academic background, especially, those bills that were already deliberated in the previous DPR session but they have not been enacted. Some other bills are complete bills that have not been deliberated in any DPR session at all.

There are the long term Prolegnas in a period of twenty years, the five years medium-term of prolegnas and the annual priorities of prolegnas<sup>16</sup>. The prolegnas term is a good idea in light of the guidelines on which the law development should be framed and directed. Therefore, the DPR and Executive Branch should provide arguments why the terms are developed and arranged. Theoretically, the terms are a kind of the grand political decision on which the law development should be directed within certain period of time. However, it could also be interpreted as merely a plan that has no big and real meaning as they should be.

In order to understand the real intention of the prolegnas term, it is important to mention that the annual Prolegnas making must be stipulated before the the enactment of law on Income Budget and State Expenditure (State Budget) every year<sup>17</sup>. It means that the

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<sup>15</sup>Article 4 Presidential Regulation No. 61 Year 2005 Concerning Mechanism and Arrangement of Prolegnas.

<sup>16</sup>Id Article 5 and See also Article 106 (2) Chapter VI of the DPR Decree No. 1 Year 2009 Concerning Rules of Conduct of DPR

<sup>17</sup>Id Article 106 (6)

Prolegnas is a kind of basis for DPR to calculate the budget of law-making when the bill on national budget is deliberated in the DPR session.

There are three different sources of proposal of bills in the prolegnas making. The first source is The People's Representative Council (DPR). Second is the Regional Representative Council (DPD), which has a limited authority to submit proposal of bills on certain issues related to decentralization policies. The third is the proposal of bills that are drafted and proposed by the Executive Branch.

DPR is responsible to prepare the bill's proposal through its complementary organ, the Legislation Council (Badan Legislasi)<sup>18</sup>. The Legislation council may ask or initiate the proposal and collects proposals of bills from several sources, such as committee, joint-committee, DPR factions and also from public or communities<sup>19</sup>. The council also receives and coordinates the proposal of bills from DPD on several aspects of decentralization issues.<sup>20</sup>

The Legislation Council is also responsible to coordinate the proposal of bills between DPR, DPD and the Executive Branch<sup>21</sup>. The bills from those three sources will be discussed and deliberated by the joint session, mostly between DPR and the Government representatives, and partly attended by DPD. The executive branch or government is represented mainly by the Minister on Laws and Human Rights (MLHR) that has responsibilities on making of laws and regulations<sup>22</sup>. The consensus between the three parties will be formally issued in the form of the National Legislation Program (Prolegnas) and

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<sup>18</sup>Id Article 2

<sup>19</sup>Id Article 8

<sup>20</sup>Id

<sup>21</sup>Id Article 10

<sup>22</sup>Id Article 6 (2)

subsequently is decided and announced by the Plenary Session of the DPR<sup>23</sup>. At the beginning term of DPR and the President, DPR issues the Mid-Term Prolegnas (Five years) and subsequently the joint meeting between DPR and the Executive Branch decide the annual priority of the Prolegnas. Since there are many bills that have been proposed or the bills from the previous DPR's session that have not been deliberated by DPR, there are priorities that are determined to select those bills.

The Priority of development that became the basis upon the selection of proposal of bills in the period of 2005-2009, as follow:

1. formation of laws in the fields of economy, politic, religion, education, science and technology, socio-culture, regional development, natural resources, and living environment, agrarian affairs, security as mandated by the 1945 Constitution,
2. to replace laws and regulations which were inherited from the colonial period and to improve the existing laws that do not longer fit with contemporary development,
3. to accelerate adjustment process of laws that have been deliberated and formation of laws mandated by other laws,
4. formation of new laws to accelerate legal reform and to support recovery of the economy, protection of human rights, eradication of corruption, collusion, and nepotism, and transnational crime,
5. ratification selectively the international conventions that are needed to support economic development, democracy, and human rights protection and also conservation of living environment,

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<sup>23</sup>Id Article 3

6. formation of new laws and regulation in accordance with aspiration of people and progression of era,
7. to provide legal basis for strict and professional law enforcement and uphold human rights and principle of equality and gender justice,
8. to treat law as a tool for reform and development in all aspects to serve interest of people, state and nation in order to attain principle of balance and between order, legitimacy, and justice<sup>24</sup>.

As a comparison, the National Legislation Program of 2010-2014 is directed by the priorities, as follow:

1. to enhance quality of human resource development and capacity of science and technology,
2. to enhance fulfillment of quality of life, and social welfare, especially in development of job areas and labor productivity,
3. to develop the state financial management that focus on people's interest and welfare, enhancing public interest, national endurance, and social solidarity while still keep supporting financial management transparency, accountability, effectiveness and efficiency,
4. to strengthen national economy that is based upon common efforts under a kinship principle that is carried out with principle of solidarity, justice, independency to keep a balance and unity of national economy in the frame of the Unitary State of the Republic of Indonesia,

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<sup>24</sup>Policy Direction of the Indonesia National Legislation Program of 2005-2009

5. to enhance food security for the people of Indonesia,
6. to facilitate the broadest public role of civil society and political party in a state and nation's lives including establishment and evaluation of decentralization and regional autonomy,
7. to create a professional, transparent, accountable, independent, and impartial of the bureaucratic system,
8. to realize an integrative national legal system and to enhance legal consciousness of people, and legal enforcer apparatus and government in order to attain consolidation of legal supremacy enforcement and protection of human rights,
9. to enhance state defense and security through structure development of security and defense in an anticipation of threat from inside or outside that could disturb stability and sovereignty of state and nation,
10. to realize sustainable development of living environment through social responsibility toward environment, environment friendly conservation of natural resources and preservation of living environment<sup>25</sup>.

The above priorities that are developed to be the basis of the selection of the proposed bills should also be connected with the National Medium-Term Plan, which is prepared by the Government in the form of the Presidential Regulation to implement the whole aspects of national development. However, the the priorities and the Plan do not seem to have a real connection since the Prolegnas is stipulated before the issuance of the Plan. Usually the prolegnas is issued one month earlier than the Plan which is issued after the inauguration of a new elected President, and prepared by the State Ministry for Development Planning National

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<sup>25</sup>The Policy Direction of the Indonesia National Legislation Program of 2010-2014.

and the National Development and Planning Agency (Badan Perencanaan Pembangunan Nasional/BAPPENAS). The Plan is a kind of blueprint of the 5 years planning of the new government on which all off the development policies of the new government shall be directed. Therefore, the Plan provides all guidance of each of the development's sector and set forth priorities that must be considered. In the first term of the President Susilo Bambang Yudhoyono (SBY), the President promulgated the Presidential Regulation No. 7 Year 2005 concerning the National Medium-Term Development Plan of 2004-2009. The general plan of legislative programs set forth the following main activities, as follow:

1. collecting, processing, and analyzing law information, in particular those which are related to the implementation of the law development plan as a whole,
2. convening of various forms of discussion and public consultations involving the government agencies/institutions, communities, and business world with a view to evaluating and to drawing up future legal development plans,
3. designing and convening of forums with a view to setting the priorities of bills into the National Legislation Program (*Prolegnas*) together with the Government and the Parliament; and
4. convening of international cooperation forums in the area of law mainly related to problems of corruption, terrorism, trafficking of women and children, of prohibited drugs, child protection, etc<sup>26</sup>.

After The President SBY was reelected again in the 2009 Presidential Election, he issued the Presidential Regulation No. 5 Year 2010 Concerning the National Medium-Term

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<sup>26</sup>Appendix of Presidential Regulation No. 7 Year 2005 concerning the National Medium-Term Plan of 2004-2009 on Strengthening up the Legal and Political System.

Plan of 2010-2014. The Plan sets forth different development agenda pertaining with the legislation, as follow:

1. to enhance the quality of substances of laws and regulations that will be carried out through research and studies in the form of the academic paper. The result of the studies and research will be used for considerations and materials to prepare the bills that will be synchronized and harmonized with the existing laws and regulations,
2. improvement of legislative process will be carried out through gradual steps from planning, preparing, legal drafting, formulating, discussing, approving, promulgating and disseminating of the laws and regulations. To assure that there is no discrepancy between legal substance and people's need, the roles of people in every step of legislation process must be empowered. This process must be supported by the implementation of the Regional and National Legislation Program that are bound the Executive Branch and the Legislative Branch and becomes a process to customize the need of legislation frame work to support the priority of national development,
3. harmonizing implementation of laws and regulation is carried out through harmonization of laws and regulations<sup>27</sup>.

From the above explanation, there are some questions that have been raised whether DPR has capacity to enact laws from the bills that are selected in the form of Prolegnas. Within 5 years of DPR and President term, in average, DPR must accomplish between 30 –

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<sup>27</sup>The Appendix of Presidential Regulation No. 5 Year 2010 concerning the National Medium-Term Plan 2010-2014 on the Development of Legal Apparatus and

40 proposed bills. Is this target realistic? Does DPR have adequate supporting system and strong commitment to produce those laws?<sup>28</sup> Does the existing complementary organ of DPR have a significant role in legislative process?

### **Implementation of Prolegnas**

Based upon the development priorities, the joint meeting has selected hundreds of bill's proposals, which will be deliberated within five years of the DPR and the Government's term. In the Prolegnas of 2005-2009, there were 284 selected proposals of bills, 55 proposals of which were selected to be accomplished by DPR in 2005. There were 44 selected proposals that were prioritized in 2006, however, since there were 34 proposals carried over from 2005, the number of bills that must be accomplished increases into 78 bills' proposal<sup>29</sup>. Among those 55 proposals of 2005 were amendment of criminal law and amendment of law on corruption. 29 bills' proposals of which were DPR initiated bills and 26 bills were the Government's bills<sup>30</sup>. In 2008, the Government submitted 38 bills for the Prolegnas 2008. According to Ramly, Chairman of the National Advisory of National Law (BPHN), the 38 bills were decided by BPHN because they fulfill several requirements such as the draft of laws were mandated by the Constitutional Court so that the bills must be improved<sup>31</sup>.

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<sup>28</sup>See AS Hikam. "Formation of laws depends on Prolegnas" .Chairman of the Legislation Council of the House of People's Representative 2005-2009. At <http://www.legalitas.org/incl-php/buka.php?d=art+4&f=prolegnas2.htm> retrieved June 1, 2010.

<sup>29</sup>See DPR Legislation Council are Optimistic to fulfill target of the Prolegnas 2004-2009 <http://us.detiknews.com/read/2006/03/23/224944/564638/10/baleg-dpr-optimis-penuhi-target-prolegnas-2004-2009> Retrieved May 24, 2010

<sup>30</sup>See DPR-Government Prioritizes 55 bills at <http://www.mediaindonesia.com/cetak/2009/11/30/108763/18/1/DPR-Pemerintah-Prioritaskan-55-RUU-.html> Retrieved May 25, 2010

<sup>31</sup>See Thirty Eight bills are Prioritized in Prolegnas 2008 at <http://www.hukumonline.com/berita/baca/hol17720/tigapuluh-delapan-ruu-diprioritaskan-dalam-prolegnas-2008> Retrieved May 24, 2010

In Prolegnas 2005-2009, there were 96 bills that were initiated by DPR and 97 bills that were initiated by the Executive Branch. The bills that contained substances on politic, law and human rights were 159 bills. There were 78 bills in the field of economy, finance, industry and trade, and 42 bills were in the aspects of social welfare were proposed. In the annual priority of 2005, there were 19 proposed bills were on politic, law and human rights, 20 proposed bills contained field of economy, finance, industry and trade while 16 proposed bills were social welfare affairs<sup>32</sup>. The following table is the accomplishment that had been made by DPR in the Prolegnas 2005-2009.

Table 1.  
The Accomplishment of Prolegnas 2005-2009

| Description                          | Year of Prolegnas Accomplishment |      |      |      |      |
|--------------------------------------|----------------------------------|------|------|------|------|
|                                      | 2005                             | 2006 | 2007 | 2008 | 2009 |
| Annual Priority bills                | 55                               | 43   | 30   | 31   | 37   |
| Bills to be accomplished             | 55                               | 76   | 78   | 81   | 76   |
| Bills that have not been deliberated | 41                               | 27   | 38   | 19   | 37   |
| Bill from previous DPR session       | -                                | 33   | 48   | 50   | 39   |
| Enacted Bills                        | 14                               | 39   | 40   | 62   | 39   |

Source: Analyzed from PSHK-Info Sheet Concerning Prolegnas 2005-2009

As revealed in Table 1, it describes that the accomplishment of bill's enactment are fluctuative from 25 percent in 2005, increases significantly to 51 percent in 2006, and then decreases gradually to 51 percent in 2007, increases sharply 76 percent in 2008 and finally decreases again at 51 percent in 2009. So, the average of the accomplishment is about 50 percent as a whole. As can be seen from the data in the table, the problem is the bulk of

<sup>32</sup>Info Sheet. Data Collected and Analyzed by Center for Law and Policy Studies (PSHK), 2009

unfinished bills from previous DPR session that had been carried over to the next DPR session. If there are no carried over bills, it seems that the accomplishment of the legislation is good. The average numbers of enacted bills are about 40 bills, which is not a bad achievement. However, we have to look at more closely on what kind of bills that are really enacted by DPR. If the enacted bills are the new regional expansion bills which are well known as the “copy and paste” bills (all articles are very similar except the name of province, district or city), we have to reconsider our conclusion on those enactment. Furthermore, there are also many revised or amended bill which could be claimed as the accomplishment and also International convention ratified bills which are very easy to be enacted.

In an evaluation of the implementation of Prolegnas 2005-2009<sup>33</sup>, Susanti reveals that among 14 bills of Prolegnas 2005 that were enacted, only two of them that were substantive laws which required DPR to elaborate and discuss deeply in the issues while the other 12 bills, which consist of government in lieu of laws, international ratification laws, state budget law and amended laws, were laws that are not significantly needed an effort to finish them. DPR enacted 39 laws of Prolegnas 2006 that seems a very good achievement, however, there were 16 laws on new regional expansions, seven laws on international convention ratifications, one government in lieu of law and four laws concerning state budget which are the easy laws. According to her, there were only eleven (11) really laws which require hard work and serious thinking to finish them. Prolegnas 2007 indicated similar achievement of the enacted bills. DPR had enacted 40 bills which was an increase number of the bills that could be enacted comparing with Prolegnas 2005 and 2006. Infact, 15 enacted laws were new

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<sup>33</sup>See Bivitri Susanti, Notes Regarding Implementation of Prolegnas 2005-2009. Working Paper presented in the Annual Discussion Meeting on Prolegnas of 2008: Enhancing Accuration and Effectifity of Prolegnas Making Held by National Law Advisory Board-Ministry of Law and Human Rights, Bogor, August 26, 2008.

regional expansion laws, 5 laws were international ratification laws, and two laws were stipulating government regulation in lieu of law.

The Prolegnas of 2010-2014 was decided by the Joint-meeting to accomplish 247 bills proposal<sup>34</sup>, 70 proposals of which should be finished by the end of 2010<sup>35</sup>. During this period, the Legislation council has received 163 proposals of bills from DPR factions, 96 proposals from Committee, 108 bills' proposal from DPD and 184 bills' proposal from public or communities. Therefore, the total bills' proposal that were received by the Council was 551 proposals. All the received proposals had been deeply discussed by the council and finally decided 220 proposals of bills for the Prolegnas 2010-2014 and 72 bills for the priority bills of 2010. The Executive Branch proposed and submitted 164 bills' proposal for Prolegnas 2010-2014 and 85 bills for the priority bills of 2010. Therefore, total numbers of bills were 384 bills<sup>36</sup>. Since the Legislation council considered enhancing the quality of laws that will be produced in the Prolegnas 2010-2014, there were 247 bills' proposals (which are lower numbers than Prolegnas 2004-2009) that were finally agreed by the Joint session between DPR and the Executive Branch<sup>37</sup>. There are no bills' proposals pertaining with the expansion of new regions in which the government has a strong commitment to reduce the number of new regional expansion.<sup>38</sup> In te Prolegnas of 2010-2014, DPD had submitted 108 bills that

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<sup>34</sup>See Prolegnas 2010-2014 Supra Note

<sup>35</sup>See 70 Rejected Bills That has to be Deliberated by DPR at " <http://www.jawapos.com/halaman/index.php?act=detail&nid=119109> retrieved May 18, 2010

<sup>36</sup>See DPR Approves 247 Bills of Prolegnas 2010-2014 and 55 Priority Bills 2010 <http://www.bangadang.com/dpr-ri/berita-dpr/2019-dpr-setujui-247-ruu-prolegnas-2010-2014-dan-55-ruu-prioritas-2010> Retrieved May 24, 2010

<sup>37</sup>Id

<sup>38</sup>See Prolegnas 2010 without bills on Expansion at <http://www.mediaindonesia.com/cetak/2009/11/11/106822/3/1/Prolegnas-2010-tanpa-RUU-Pemekaran.html>

consist of 23 bills concerning politic and law, 50 bills regarding natural resources, 16 bills on new regional expansion and 19 bills concerning education, religion, social and culture<sup>39</sup>.

In Prolegnas 2010-2014, there were 63 proposed bills that regulate politic, law and human rights, the other 78 bills were containing economy, finance, industry, and trade, while social welfare was covered by 106 proposed bills. Furthermore, in 2010, there are 55 proposed bills that are divided by 20 bills on politic, law and human rights, 18 proposed bills on economy, finance, industry and trade, and 17 proposed bills on social welfare<sup>40</sup>.

### **Prolegnas: Problems Encountered**

DPR has encountered many problems related to quantity and quality accomplishment of the Prolegnas and related law making process. The problems that are identified toward implementation and making process of the Prolegnas are: a small and limited amount of budget available to enact the bills, a very limited time available of DPR members to attend the Prolegnas meeting due to their bulk of meeting and other agenda causes very low accomplishment of laws enactment, deliberation and enactment of many non-prolegnas bills, flexibility and low-commitment of DPR member to finish the bills, an increasing numbers of new elected DPR members, and low quality of enacted bills.

In the end of DPR session of 2005-2009, Agung Laksono, the speaker of DPR, recognized that the accomplishment of law making was very low. According to him, it had been a concern among DPR members which was caused by the small amount of budget available to make the law. Whereas the law making had to involve participation of people and

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<sup>39</sup>See DPD is Optimistic to have more roles in the Prolegnas <http://www.mediaindonesia.com/cetak/2010/04/04/134553/3/1/DPD-Optimistis-Lebih-Berperan-di-Prolegnas.html> Retrieved May 25, 2010

<sup>40</sup>See data collected and analyzed by Center for Law and Policy Studies (PSHK) Jakarta, 2009.

expert, DPR had no budget to invite and hire the expert. At that time, DPR had allocated IDR 300 million to enact one bill while the Executive Branch's budget to enact the bills reached IDR 2-3 billion for every bill. Therefore, the Legislation Council was planning to increase the budget up to IDR 700 million for each bill<sup>41</sup>.

In the periode of 1999-2004, the legislative budget was only IDR 200 million for each bill while in the periode of 2004-2009, the budget was increased to IDR 400 million, and then IDR 560 million and currently is IDR 1,7 billion<sup>42</sup>. However, after the budget is increased over years, the quality and quantity of the bills that were enacted are still low. According to Indonesia Budget Center (IBC), DPR potentially wastes the state budget of Prolegnas 2009-2014. The state budget provides IDR 1.24 trillion to accomplish 248 bills of the Prolegnas. Even, the budget could possibly change if an allocation of the 5 billion rupiah is increased. In the previous period the budget was always increased over time<sup>43</sup>. Moreover, for instance, for the annual priority bills of 2010, DPR needs IDR 307,4 Billion to finish 58 bills even though 43 percent of those bills are revised or amended bills that are clearly not difficult. The budget is based upon the consensus between DPR and the Executive Branch and each bill needs IDR 5.3 billion<sup>44</sup>.

Beside that, many deliberations of bills were suspended before DPR finalized and approved those bills. There were no clear arguments why another bill could override the

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<sup>41</sup>See "When DPR is No Longer House of People" at <http://www.suarapembaruan.com/News/2005/12/15/Sorotan/sor02.htm> Retrieved May 24, 2010

<sup>42</sup>See Prolegnas is Merely a Program; From 284 targetted bills, Just 93 bills enacted <http://antikorupsi.org/indo/content/view/11846/6/> Retrieved May 24, 2010

<sup>43</sup>See Prolegnas Potentially wastes State Budget at <http://www.koran-jakarta.com/berita-detail.php?id=38978> retrieved May 24, 2010

<sup>44</sup>See Crazy, Make 58 Bills Need IDR 307 Billion at <http://www.rakyatmerdeka.co.id/news/2010/01/15/86417/Gile-Garap-58-RUU-Butuh-Rp-307-Miliar> Retrieved May 24, 2010

others bills that had been deliberated in several meetings of the Bills' committee. It obviously demonstrated that DPR wasted money that was already used to deliberate the bills.

Another impediment is said by DPR's members that the availability of time to deliberate the bills is very limited due to heavy tasks assigned towards each of DPR members. The fact that DPR has three main functions to enact laws, control the Administration, and approve the national budget is one of reasons why the DPR accomplishment to enact laws is very low. According to some members of DPR, they have to attend several meetings at the same time since they are appointed by committees or their factions to do several numbers of DPR agenda.

The low number of enacted bills which is about 35-40 percent of the Prolegnas each year reflects the Prolegnas that is beyond the capacity of DPR members. Therefore, it is very hard for DPR to reach the target. It seems that prolegnas making is based upon DPR's want rather than their need to accomplish the legislation<sup>45</sup>. In addition, the carried over bills are increasing over time. For instance, the DPR members of 2009-2014 are responsible to accomplish hundreds of bill even before they are inaugurated. There are 268 bills that have not been deliberated by the previous DPR members which consist of 205 bills from Prolegnas 2005-2009 and non-prolegnas bills<sup>46</sup>. Therefore, Center for Law and Policy Study (PSHK) encourages the Legislation Council to supervise legislative process. According to PSHK, the targeted bills to be enacted in 2010 are almost impossible eventhough Article 141 (2) of the Rules of Conduct of DPR confines period of bill's deliberation is two times of DPR session at

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<sup>45</sup>See Prolegnas hasn't fulfilled its target at <http://beritasore.com/2008/05/22/prolegnas-belum-penuhi-target> Retrieved May 24, 2010

<sup>46</sup>See DPR 2004-2009 Evaluation: Prolegnas is not maximal, 268 Bills are responsibility of DPR 2009-2014 at <http://us.detiknews.com/read /2009/10/01/103044/1212605/10/prolegnas-tak-maksimal-268-ruu-jadi-tanggung-an-dpr-2009-2014> Retrieved May 24, 2010

the most with possible extension of one DPR session<sup>47</sup>. If we compare with the Germany Parliament, the targeted bills of the Prolegnas are very low. Since 1949, 8.400 bills have been submitted to the Federal Parliament (Bundestag) and more than 6.000 bills already been enacted. It means that average of enacted bills are 103 each year or five times higher than DPR's achievement in Indonesia<sup>48</sup>.

Another factor of bad achievement is many bills that are deliberated were non-Prolegnas bills. This fact is mentioned by DPR speaker when he opened a workshop in his office of the Parliament Building<sup>49</sup>. There are number of non-Prolegnas bills that are originally coming from consensus between the Executive Branch and DPR after the Prolegnas is approved by DPR Plenary Meeting<sup>50</sup>. According to Salang, a NGO activist, more than half of legislative products are coming from non-prolegnas bills which are "invisible bills". It means that DPR did not have priority and commitment to the Prolegnas and could possibly be sponsored by certain interest group or parties.<sup>51</sup> This situation happens because of Article 3 of the Presidential Regulation No. 68 Year 2005 on Mechanism to Prepare Bill, draft of Government Regulation in Lieu of Law, Government Regulation and Presidential Regulation draft. It says that in particular circumstances DPR and the President may enact bills that are not listed in the Prolegnas.

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<sup>47</sup>See Baleg Has to Supervise Legislative Process at <http://www.mediaindonesia.com/cetak/2010/04/04/134524/3/1/Baleg-Harus-Supervisi-Proses-Legislasi.html> Retrieved May 25, 2010

<sup>48</sup> Id

<sup>49</sup>See Prolegnas hasn't fulfilled its target at <http://beritasore.com/2008/05/22/prolegnas-belum-penuhi-target> Retrieved May 24, 2010

<sup>50</sup>See DPR 2004-2009 Evaluation: Prolegnas is not maximal, 268 Bills are responsibility of DPR 2009-2014 at <http://us.detiknews.com/read/2009/10/01/103044/1212605/10/prolegnas-tak-maksimal-268-ruu-jadi-tanggung-dpr-2009-2014> Retrieved May 24, 2010

<sup>51</sup>See DPR Legislative Performance is Bad at <http://www.mediaindonesia.com/cetak/2009/09/09/97077/3/1/Kinerja-Legislasi-DPR-Buruk.html> Retrieved May 25, 2010

Even though there are priorities stipulated by the joint session between DPR and the government representative to select bills that are selected in the Prolegnas, it seems that there is no commitment among DPR and the government to stick on those priorities. According to Mulyono, who is chairman of the Legislation Council of DPR, says that the priorities are based upon the 1945 mandates, MPR Decree, National Development Planning System, National Medium-Term Plan, Government Work Plan, and accommodation of people's interest<sup>52</sup>.

There are suspicions over DPR that the Prolegnas is selected upon the interest of DPR's members rather than the interest of their constituents. This condition is also observed by Salang, a NGO activist on Parliamentary Affairs, who says that many "invisible bills" are sponsored or supported by political and economic interest. It has indicated that DPR develops Prolegnas that does not depend on people's need. More than that, the interest of certain groups also emerges in the prolegnas making which is obviously neglecting the interest of people<sup>53</sup>.

The number of new elected DPR members is another problem. If there are many new elected members of DPR, the legislative process will take longer since they have to adjust and learn how DPR works and what their responsibilities are, etc. This is part of challenges of democracy in Indonesia. Democracy does not guarantee the elected people could perform and represent their constituent very well. Therefore, the political and legal system must provide supporting system that encourages their representative to learn fast of any responsibilities that

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<sup>52</sup>See DPR Approves 247 Bills of Prolegnas 2010-2014 dan 55 Priority Bills of 2010 [http://www. Bangadang.com/dpr-ri/berita-dpr/2019-dpr-setujui-247-ruu-prolegnas-2010-2014-dan-55-ruu-prioritas-2010](http://www.Bangadang.com/dpr-ri/berita-dpr/2019-dpr-setujui-247-ruu-prolegnas-2010-2014-dan-55-ruu-prioritas-2010) Retrieved May 24, 2010

<sup>53</sup>id

they might take and also hiring expert and professional staff to support various jobs and activities of the parliament members.

The last identified problem is a low quality of enacted bills. Due to the low quality, many laws cannot be implemented and some of which are sued by individual, civil society and other groups in the Constitutional Court. This problem could be detected since the beginning process of Prolegnas making. Many unclarity and non-transparent bills making are a very obvious fact that the good result of legislation will be hardly achieved. According to some reports, there are about 20 percent laws that had been sued by civil societies and other groups to the Constitutional Court due to the potential violation of the 1945 Constitution<sup>54</sup>. It is a good system in the sense of democracy, however, it has created uncertainty since the cancelation of certain articles of bills or revocation of certain laws would take time to have a new law put in place. On the other hands, the unpredictable condition will prevail and the society will suffer for a longer period of time.

## **Conclusion**

Prolegnas is a good idea in the sense that the law development should be framed in long term, medium term, and annual legislation program. It gives a direction or policy lines where the law development goes and where they come from. However, credibility of prolegnas is questioned when the prolegnas making is not transparent and contains processes in which the selected bills do not have strong reason of being selected by the joint meeting

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<sup>54</sup>See DPR Evaluation of Prolegnas 2004-2009 is not Maximal, 268 Bills becomes DPR 2009-2014's burdens at <http://us.detiknews.com/read/2009/10/01/103044/1212605/10/prolegnas-tak-maksimal-268-ruu-jadi-tanggung-dpr-2009-2014> Retrieved May 24, 2010

between DPR and the Executive Branch. It obviously describes a meeting of vested interest between DPR and the Government that does not mainly reflect development policies that are translated from the public interest or the nation interest as a whole.

Therefore, the Prolegnas can be interpreted merely as the list of bills, which are selected, to comply with the formal procedure, without substantive consideration why they are selected and what purposes of the selection are. Especially, when it is treated as a kind of prerequisite document, in order to calculate how much budget will be devoted to accomplish “unclear” legislative process. Many non-prolegnas bills that are consensually added and deliberated by DPR and the Government are the evidence that the prolegnas is really a serious document for the legislation policies that should be relied on. Furthermore, many bills that are already deliberated are postponed by other new bills’ deliberation without any credible clarification. Unfortunately, the budget that is provided to accomplish the unfinished bills is not clearly reported to the public. The increasing budget that is periodically requested to perform better legislative process and produce better quality and quantity of enacted bills does not resolve the root problems of prolegnas making since there are no significant correlations between increasing legislative budget and the better quality and quantity of enacted bills.

Quantitative achievement of enacted bills is frequently used to demonstrate the good performance of DPR on which the people of Indonesia could be manipulated. However, if we look at the enacted bills very closely, many of those bills are not difficult bills and mainly because it is very easy to get huge compensation from the legislative budget without hard work requirements. The fact that many enacted bills concerning new regional expansion are deliberated and eventually promulgated is very easy indicators how DPR try to use their

authorities to take advantage for their own interest. Some other similar bills are ratification of many international conventions and bills on state budget. On the other hand, when several important bills are promulgated without credibility and professionalism, many of those bills are sued in the Constitutional Court.

The actual need that must be taken into consideration is revisiting the prolegnas comprehensively. The prolegnas should be put in an original objective of its establishment. As an instrument of planning, the Prolegnas should be developed under credible rationale of the state and public interest. Therefore, any flexible aspects of prolegnas must be reduced and incentive and disincentive mechanism must be upheld. The main consideration is how to maximize the greatest benefit of the state and society through which the law development must be created.