

## **POLITICAL LEGAL FORMATION OF LEGAL REGULATIONS USING *THE CARRY-OVER MECHANISM* AND ITS RELATIONSHIP TO GENERAL PRINCIPLES OF GOOD GOVERNMENT**

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### **ABSTRACT**

*Legal politics in the formation of a draft law into law requires a mechanism with a process that is not simple. The process of forming statutory regulations is regulated in Law Number 15 of 2019 concerning the Formation of Legislative Regulations. The planning and preparation stage begins with the National Legislation Program (Prolegnas). In the Prolegnas, it is planned and prepared an agenda for any bills which will be the task of the House of Representatives to be discussed for the next 1 (one) to 5 (five) years and are only valid during the term of office of the DPR in that period. Therefore, a mechanism for "inheriting" the bill from the previous period to the next period is needed to ensure the continuity of the bill discussion process or it can be called a "carry-over" mechanism which basically has the main objective of continuing the discussion of the bill so that it reaches the enactment stage. raised in this paper is "What is the process of forming legislation with a carry-over mechanism and its relationship to the general principles of good governance?" The research method used in this journal is normative legal research method, which refers to legal norms contained in laws and court decisions, as well as legal norms prevailing in society. The results of this research show that Prolegnas, as the first step in determining what bills can be drafted using the carry over concept, is a form of legal politics in the formation of laws. It is hoped that the formation of laws through the carry-over concept can perfect the process of forming laws and regulations that pay attention to the effectiveness and sustainability of development planning and are in accordance with the formation of good laws and regulations.*

**Keywords:** Legal Politics, Draft Law, Carry-Over.

### **INTRODUCTION**

Legislation is a part or subsystem of the legal system. Therefore, discussing the

politics of legislation is essentially inseparable from discussing legal politics.

<sup>1</sup>M. Mahfud MD stated that legal politics includes: First, legal development which has as its core the creation and updating of legal materials so that they can suit needs. Second, implementation of existing legal provisions, including confirmation of institutional functions and guidance of law enforcers.<sup>2</sup>

As a country of law, of course Indonesia cannot be separated from legal politics in forming laws and regulations. According to M. Mahfud MD, legal politics is the state's official legal policy regarding laws that will or will not be enforced (making new rules or repealing old rules) to achieve state goals.<sup>3</sup>

The process of making laws as an experiment in adopting laws may not satisfy society. This is because in the law-making process the interests of society and the interests of the state meet. Society needs a stable legal system, reflecting the changing demands and interests of society. To fulfill this task, the law-making process must be based on democracy and science to reflect and determine the development of society. And society is interested in the influence

of government bodies in lawmaking and control in it.<sup>4</sup>

State errors in the law-making process can have negative consequences for the development of society; On the contrary, the correct direction of the law-making process will provide positive results for the development of the country. This is especially important in periods of social crisis. To a certain extent, an indicator of the effectiveness of the law-making process is law enforcement.

Lawmaking establishes models of behavior – legal norms but a changing society often fills them with new content. Enforcement indicates whether the new norm is appropriate to the relationship. Most law-making processes are political processes and in principle cannot be regulated by law. Legal scholars can formulate the main principles of this process but it is important if these principles can be enforced in practice.

Because, these principles are the constitutional principles of a modern state. These principles bind states and guarantee the rights of communities, groups and

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<sup>1</sup>Hm. Laica Marzuki, The Binding Power of Constitutional Court Decisions on Laws, *Journal of Legislation* Vol. 3 Number 1, March 2006, Pg. 2

<sup>2</sup>M. Mahfud Md, *Legal Politics in Indonesia*, Cet. Ii (Jakarta: Lp3es, 2001) Pg. 9.

<sup>3</sup>*Ibid.*, p. 2.

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<sup>4</sup>Bennion *Outlines the Principles of Legal Effectiveness, Procedural Legitimacy, Timelessness, Certainty, Comprehensibility, Acceptability, Brevity, Arguability, Legal Compatibility.* (The Vagueness of Statutory Laws and Drafting Parameters. (British Journal Of Law And Society, 1978). These Principles Concern The Drafting Process.

individuals. Modern constitutions recognize and define the state as a social legal state; democratic based on the principle of separation of powers. In fact, this principle determines the place of the legislative body in the law-making process and the character of the law-making process.

Law as the main source of the national legal system. Today law (acts of legislative bodies, statutes) is considered the primary source of almost all national legal systems. The practice of countries with different legal traditions shows an increase in the number of acts of legislative bodies.<sup>5</sup> Laws are the basis of the modern legal system so the elaboration of these laws is important for the state, society and the country.<sup>6</sup> The novelty of this research is the process of forming laws and regulations with a carry-over mechanism and its relationship with the general principles of good governance.

In this study the general term 'legislative body' is used. This is a conditional term for the definition of legislative representative bodies as a rule they have different names in different

countries. Legislative bodies are representative bodies because they express the will of the people as subjects of sovereignty. As a rule they are elected but also other forms of representation are used.

The emergence of provisions in Article 71A of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations mandates the implementation of a carry-over mechanism in the law formation process in Indonesia. As a result, the National Legislation Program agenda which is only valid for 5 (five) years in accordance with one term of office of the House of Representatives can continue its discussion on the agenda of the National Legislation Program for the next term of office of the House of Representatives.

Forming a bill into law requires a law formation mechanism with a process that is not simple. The process of forming statutory regulations is regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UU P3), Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UU 15/2019), to DPR Regulation Number 1 of 2014 concerning

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<sup>5</sup>Calabresi G. *Common Law For The Age Of Statutes* . Cambridge (Mass.), 1981; Hurst J. *Dealing With Statutes* . N.Y., 1982; Bennion F. *Statute Law*. L. 1980

<sup>6</sup>Andi Mattalatta, Indonesian Legislation Journal, Vol. 6 No. 4, Directorate General of Legislation, December 2009

Rules of Procedure (DPR Regulation 1/2014)<sup>7</sup>. Based on the P3 Law, the stages of law formation consist of planning, drafting, discussing, ratifying and promulgating. These stages are what is called sustainable law formation.

The planning and preparation stage begins with the National Legislation Program (Prolegnas). In the Prolegnas, an agenda is planned and drawn up for any bills that will be the task of the DPR to discuss over the next 1 (one) to 5 (five) years. After establishing the National Legislation Program, the next stage is the stage of discussing the law. This stage is carried out within a period of 3 (three) hearing periods with a minimum of 2 (two) progress reports being submitted in each 1 (one) hearing period. Reporting from the DPR's official website, in 1 (one) session year, the trial period can be held 4 (four) to 5 (five) times.<sup>10</sup> So, the discussion of a law can take approximately 9 (nine) months to 1 (one) year.

After the bill has been discussed and jointly approved by the DPR and the President, the President is given a period

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<sup>7</sup>Law Number 12 of 2011 concerning the Formation of Legislative Regulations as Amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations

of 30 days to ratify the bill into law. According to the provisions of Article 73 Paragraph (2) of the P3 Law, in the event that the President does not sign a bill that has been mutually agreed upon, the bill automatically becomes law and must be promulgated<sup>8</sup>. With the series of processes for forming legislative regulations that have been regulated in such a way in the law, previously there was one provision that caused polemics, especially related to the discussion of bills during the DPR's term of office. This polemic arose as a result of the provisions of Article 20 Paragraph (3) of the P3 Law which states that, "The preparation and determination of the medium-term Prolegnas is carried out at the beginning of the DPR's membership period as Prolegnas for a period of 5 (five) years." This means that the discussion of the Bill that has been stipulated in the Prolegnas is only valid during the term of office of the DPR in that period, namely 5 (five) years.

So, the bill that is currently under discussion must be stopped if the term of office of the DPR ends and the term changes with new people's representatives. Indeed, the P3 Law does

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<sup>8</sup>General Explanation, Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

not explicitly state that discussion of the bill will be stopped after the DPR's term of office changes. However, according to the Legislative Body of the House of Representatives, the practice of stopping discussions at the change of the DPR term of office often occurs every 5 years, based on the provisions of Article 20 Paragraph (3) of the P3 Law.<sup>9</sup>

The condition of stopping discussion of a bill after a change in the term of office of the DPR is not new considering that this happens every 5 years. Therefore, a mechanism for "inheriting" bills from the previous period to the next period is needed to ensure the continuity of the bill discussion process or what can be called a " *carry-over* " mechanism. The " *carry-over* " mechanism basically has the main objective of continuing the discussion of the bill until it reaches the enactment stage. So that legal certainty for the community does not need to be left in limbo until later periods . Apart from that, this mechanism aims to avoid fluctuations in the legislative process due to changes in the DPR across periods.

The research method used in this journal is normative legal research method, which refers to legal norms

contained in laws and court decisions, as well as legal norms prevailing in society.

Based on the description above, the problem raised in this article is "What is the process of forming laws and regulations with a *carry-over mechanism* and its relationship to the general principles of good governance?"

## RESULTS AND ANALYSIS

### A. Legal Politics of Formation of Legislative Regulations

The law-making process is a form of state activity aimed at creating (or revising) legal norms. The term 'law' has two meanings. This can mean positive law (statutes, or acts adopted by government bodies) or natural law (Recht, Droit). Additionally, the term 'law' will be used in the narrow sense as an act of a legislative body, i.e. a statute.<sup>10</sup>

At the same time, research on the law-making process would be incomplete without looking at the influence of law on the law-making process. Lawmaking is a process in which ideas about law are transformed into law. Law has various forms (sources) - acts of legislative bodies (statutes), acts of

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<sup>9</sup>Legislative Body of the House of Representatives of the Republic of Indonesia, Evaluation of Prolegnas 2010-2014 (Jakarta, 2014), 33.

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<sup>10</sup>Satjipto Rahardjo, Legal Studies, Bandung: Citra Aditya Bakti, 1991, Pg. 352.

executive bodies (they have different names - orders, instructions or others), finally judicial precedents, legal customs.<sup>11</sup>

Law making from each legal source has different characteristics. For example, customary lawmaking is different from lawmaking of legislative acts. Legal customs are formed by the repetition of norms over long periods of time. The state does not play a major role in this process because it only approves the norms that are created. This is regulated in Law Number 15 of 2019 concerning the Formation of Legislative Regulations.

The creation of laws from the actions of government bodies is more organized, not so spontaneous as the creation of laws from legal customs. The law-making process consists of several stages. As a rule, acts are prepared, researched, adopted and published<sup>12</sup>. The first stage includes the preparation of the first version of the project (RUU) in which the idea of the law is realized. Individuals,

groups of individuals, associations but usually government agencies, can do this work. A government body can take official decisions regarding the development of a project, assign tasks to its internal structures (committees, departments) to write laws, make a prior analysis of public interests, needs in the law, correspondence of possible actions current legislation and constitution.

The project is discussed by experts, associations, groups of interest. The working commission analyzes the results of the discussion and changes the text. The next stage consists of inspection of the project in government agencies. The vetting process differs across state agencies. In the executive body the process is not strictly regulated (it is more flexible), whereas in the legislative body the process is regulated partly by the Constitution, partly by the body itself. Acts can be adopted by collective bodies (legislative bodies, Government) or by individual officials - heads of state, or ministers. The final stage of the lawmaking process – publication of the law in the official edition, information about it

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<sup>11</sup>CF Strong, *Modern Political Constitutions Comparative Study of History and Form*, Nusa Media, Bandung, 2010, Pp. 6 3 Ibid Op.Cit, Soehino, Pg. 146

<sup>12</sup>Miriam Budiardjo, *Basics of Political Science*, Gramedia Persada, Jakarta, 1991, P.46

in the mass media - on the radio, in newspapers or on TV.

In many countries unpublished acts have no legal force. The process of making this law is a complex process. The state plays a major role in it. It gives norms the force of law and supports their enforcement with the power of the body. The adopted act is considered a state act. A state can regulate the law-making process, plan it and thereby influence the development of law. However, the activities must be legal and not arbitrary<sup>13</sup>.

The law has higher legal force (after the Constitution). The reason for strengthening the position of the legislative body's actions is in the democratic character of the adoption procedure. In legislative acts, the will of the people is transferred to the will of the state. They are the result of certain political compromises of different social and political interests. To reach a compromise, a special legislative process was established. Open to the public, mass media, so it is under social control.<sup>14</sup>

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<sup>13</sup>Soehino, Constitutional Law, Legislative Engineering, Liberty, Yogyakarta, 2008, Pg. 1

<sup>14</sup>Concluded from Padmo Wahyono, Indonesia is a Country Based on Law, Cet. Ii, (Jakarta: Ghalia Indonesia, 1986), Pg. 160, Dan Padmo Wahyono,

Although laws are adopted by the legislature, other government bodies also take part in this process. The executive and legislative powers take part in making laws. The government introduces most bills and controls the legislative process to a greater or lesser extent. The head of state can sign laws or use the right of veto. Adopted laws can be checked for constitutionality by the judicial authority. So if a law is in force it means that all state powers agree with its contents. Lawmaking from legislative acts is controlled by the state to a greater degree than lawmaking from other sources.

The pre-legislative stage in presidential republics has its own characteristics. These countries are based on the principle of strict separation of powers. Legislative power is divided from the executive and primarily fulfills the task of lawmaking. There is no government in the sense of a parliamentary state. The president is the head of state and head of government separate from the legislative body. In fact, such a system to a greater extent makes it

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"Investigating the Process of Legislation Formation", Justice Forum, No. 29 (April 1991), Pp. 65

possible to maintain a strong position of the legislative body.

Legal Politics according to Moh Mahfud MD through his book entitled *Legal Politics in Indonesia*, states that legal politics is legal policy or official lines (policies) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals. Thus, legal politics is a choice about laws that will be implemented as well as choices about laws that will be repealed or not implemented, all of which are intended to achieve state goals as stated in the Preamble to the 1945 Constitution. Then, Abdul Latif and Hasbi Ali in their book explain that the politics of Legislation is a legal subsystem. The politics of Legislative Regulations cannot be separated from the politics of law because legal politics is basically the politics of Legislative Regulations which is defined as "wisdom" or (public policy) regarding determining the content or object of forming legislative regulations.<sup>15</sup>

Legislation will basically reflect the most influential political thoughts

and policies, which can be based on certain ideologies. Indonesia based on Pancasila and based on kinship will have its own legal politics in accordance with *rechtsidee*; contained in Pancasila and the 1945 Constitution. Legislative regulations in their formation need to pay attention to responsive legal development in order to produce laws that are responsive to the demands of various social groups and individuals in society. This can be achieved by forming participatory and aspirational laws and regulations. This means containing material that is generally in accordance with the aspirations or wishes of the community it serves. So that legal products can be seen as the crystallization of the will of society, which in this case is as we know, the noble ideals of our nation are contained in Pancasila.<sup>16</sup>

## **B. Carry-Over Mechanism**

Carry over in the formation of laws in Indonesia, which begins with the process of drafting the Prolegnas as the initial stage of law formation, is closely related to legal politics. Article 71A of Law Number 15 of

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<sup>15</sup>Moh Mahfud Md. 2019. "Legal Politics in Indonesia", Ed. Revised, Cet. 9. Depok: Rajawali Press, Pg. 1.

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<sup>16</sup>Abdul Latif and Hasbi Ali. 2019. "Legal Politics". Jakarta: Sinar Graphics, Pg. 164-165

2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations mandates the implementation of a carry-over mechanism in the law formation process in Indonesia.

Prolegnas, as the first step in determining what bills can be drafted using the *carry over concept*, is a form of legal politics in the formation of laws. It is hoped that the formation of laws through the carry-over concept can perfect the process of forming legislative regulations, of course not only paying attention to the effectiveness and sustainability of development planning as outlined in the Prolegnas framework, but also must be in accordance with the formation of good legislative regulations. . Based on this, this article will explain the carry over concept in the formation of laws in Indonesia based on Law Number 15 of 2019 as well as the legal politics of the carry over concept in the formation of good laws.<sup>17</sup>

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<sup>17</sup>Republic of Indonesia Legislative Body. "Materials for Legislative Council Meetings, Material for the Content of the Bill Concerning the Formation of Legislative Regulations". DPR RI Legislative Body, 13 June 2019, Accessed 6 July 2020. [Http://www.dpr.go.id/dokakd/document/Rj5-20190805-014436-7448.pdf](http://www.dpr.go.id/dokakd/document/Rj5-20190805-014436-7448.pdf) 13 June 2019. Brief Report of the Legislative Body

Each faction within the term identifies a small amount of work for introduction towards the end of the term to be carried over to the next term. Redirection should not be seen as a way to extend the time available for a bill towards the end of its passage, as the bill must usually complete its parliamentary passage within 12 months of the date of First Reading. Rather, it helps Parliament and the government spread the workload in each term of office.

Intent to *carry over* must be demonstrated on Second Reading by a *carry over* motion moved by the bill minister. In order to be transferred, a job or work plan must have received Second Reading but not yet received Third Reading in the first place. The draft law was submitted in a new session under the terms of suspension and went straight to the stage where it left off (the stage that had been discussed in the previous session was taken up again as a formality).<sup>18</sup>

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Meeting in Framework for Preparing a Bill Concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations. Jakarta: DPR RI Legislative Body, Accessed July 6 2020. [Http://www.dpr.go.id/dokakd/document/Rj3-20190805-014436-5882.pdf](http://www.dpr.go.id/dokakd/document/Rj3-20190805-014436-5882.pdf)

<sup>18</sup>Regarding the Juridical Basis for the Formation of Laws Concerning the Formation of Legislative Regulations, it is explained in Chapter I of the

Bills are never transferred from one Parliament to the next unless they are mixed bills or private bills, when different procedures apply. Bringing pending work forward helps spread Parliament's workload over the term. Delayed work introduced in the Commons to be carried over to the next term of office allows time to be scrutinized at the start of most terms of office. *Carry over* should not be seen as a way to extend the time available for planning work towards the end of its authorization. The *carry-over* bill must complete its parliamentary passage within 12 months from the date of First Reading, unless the House approves a separate motion extending the timetable. However, *carry over* gives the Government the flexibility to delay the enactment of a small number of bills (usually no more than two or three per year).

At the next session, the bill is presented and printed in the same terms as when it was suspended in the previous session (i.e. including

changes made to the bill). It will then be deemed to have been read a first and second time and will be assigned to whatever stage it has reached (or committed to Committee with respect to the remaining parts of the Bill, if proceedings at the previous session were suspended midway).

Based on the Law on the Formation of Legislative Regulations, Prolegnas is a priority scale for the law formation program in the context of realizing a national legal system.<sup>19</sup>The preparation of the Prolegnas is carried out by the DPR, DPD and the Government. Prolegnas is determined for the medium and annual term based on the priority scale for the formation of Draft Laws.<sup>20</sup>The preparation and determination of the medium-term Prolegnas is carried out at the beginning of the DPR's membership period as Prolegnas for a period of 5 (five) years. Before preparing and enacting the medium-term Prolegnas, the DPR, DPD and the Government carry out an evaluation of the medium-term

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Academic Paper, in the Background Section. Republic of Indonesia Legislative Body. 2019. Ruu Ri Academic Manuscript Concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislative Regulations. Jakarta: Legislative Body, Pg. 3.

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<sup>19</sup>Article 17 of the Law Concerning the Formation of Legislative Regulations.

<sup>20</sup>Article 20 Paragraphs (1) and (2) of the Law Concerning the Establishment of Legislative Regulations.

Prolegnas for the previous DPR membership period.<sup>21</sup>

The drafting of the Prolegnas within the DPR, which is coordinated by the DPR apparatus which specifically handles the field of legislation (the Legislative Body of the DPR RI), is carried out by considering proposals from factions, commissions, members of the DPR, DPD, and/or the public. 30 Based on research in the Legislative Body of the DPR RI and The Legislative Drafting Center for the Expertise Body of the Secretariat General of the DPR RI, it is known that in terms of planning to determine the list of bills that will be carried over to be included in the Medium Term Prolegnas and Priority Prolegnas, one of them begins with proposals from factions, commissions, members of the DPR, DPD, and/or the community. This is explained in the provisions of Article 110 paragraph (1) and paragraph (2) of the DPR Regulations concerning the Formation of Laws.

Any amendment notices, new clauses and schedules that were not disposed of at the previous session

will be reprinted, either a forwarding procedure motion will make provision for reprinting or the amendments will need to be re-arranged. On reintroduction in the second session, the explanatory notes, impact assessment and delegated powers memorandum must be reissued, and revised as necessary to reflect the bill as it existed at the end of the first session (i.e. incorporating any amendments made to the bill in the first session). The relevant Secretary of State depending on which House the Bill is in, will also have to sign off on the new statement section.

Decisions about which planned jobs or pending jobs should be brought up and made in a structured manner. Departments that consider that their bills may be suitable for transfer should mention this when bidding for legislative slots and should discuss the possibility of transfer with the Secretariat and suggest bringing the bill to help manage the legislative program.

Intent to move or continue planned work or pending work must usually be shown at Second Reading (although a move to move can be moved at any stage before Third

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<sup>21</sup>Article 20 Paragraph (3) San (4) Law Concerning the Establishment of Legislative Regulations.

Reading). To carry out such work, the minister must put down a motion that the process on public bills not completed before the end of the session will be continued at the next session. Each motion must concern only one subject of the work discussion. If the transferred motion is submitted on the same day as Second Reading, it can be decided without debate.

A bill must complete its parliamentary approval within 12 months of First Reading or it will fail unless the DPR approves the extension motion. There is no requirement for a bill to reach the end of the Committee Stage or the end of the Report Stage by the end of the session. Proceedings may be suspended at any stage between Second and Third Reading. When the bill is reintroduced in the second session, the explanatory note, impact assessment and delegated authority memorandum must be revised to include any amendments made to the bill in the first session.

Carrying over a previous job to the next term of office may happen but is rare. Whether the planned work or pending work is eligible for

transfer or not needs to be approved under ordinary circumstances. The procedure for carrying *over* is not regulated by *standing order*, which is debatable. The precedent requires two motions – a paving motion in the first session, relying on the bill not completing all its stages before the end of the session, and a main motion in the second session, which allows debate on the bill to pick up where it left off.

It should be understood that when a bill is reintroduced in the second session, the explanatory note, impact assessment and delegated powers memorandum must be revised and reissued and the new statement must be signed by all parties concerned. There is no precedent for the transfer or continuation of such a work program by the DPR in its second term, provided that the bill has undergone pre-legislative scrutiny in its draft. This process will require approval from all factions for both terms of office through a specially designed movement. In the second session, the bill will be submitted to the DPR as long as it is deemed to have gone through all the stages in the DPR and been passed. Then it will

be sent to the DPR for the next term of office, where it is deemed to have completed all the stages that were completed in the previous session and determined for the next stage.

If projected in the law formation process in Indonesia, the implementation of the carry-over mechanism will occur after the new DPR period has been inaugurated. So that discussion of bills that were not resolved in the previous DPR period can be continued in the next DPR period. In general, the aim of carry-over is to avoid fluctuations in the legislative process due to changes in the DPR across periods. The carryover reflects flexibility to avoid bottlenecks in the law formation process.<sup>22</sup> Carry-over can also be used as a mechanism that supports supervision in the law formation process to minimize errors by providing more time for discussion.

The aim and purpose of continuous law formation (UU) is a formation process that is able to take the bill through all the series or stages

that must be passed,<sup>23</sup> so that the bill can certainly be enacted.<sup>24</sup> Basically, whether or not a bill can go through all the series or stages that must be passed does not depend on whether or not there is a legal umbrella. This allows discussion of the succession of draft laws across departments, but depends on the political will of the legislature itself. Because, no matter how likely it is that discussion of a bill will continue, if there is no intention to complete the bill, the bill will never be implemented. Since the design of a legislative term of office essentially requires the establishment of legally binding institutions, ongoing legal formation must also be built within the framework of the formation of legally binding laws.

Constructive modeling of cyclical law formation patterns requires explaining the concept of sustainable law formation by trying to present a comprehensive and simple law formation process. Thus, one bill will be able to complete all formative stages in one period. This can be done, for example, by making it more

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<sup>22</sup>Richard Kelly, “*Carry-Over Of Public Bills*” (London : *House Of Commons Library* , 2017), P. 5

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<sup>23</sup>Yuliandri, *Principles of Forming Good Legislation: Ideas for Forming Sustainable Laws* (Jakarta: Raja Grafindo Persada, 2009), p. 251

<sup>24</sup>DPR-RI Legislative Body, *Academic Paper...*, p. 47-49.

effective and choosing the urgency of ratifying laws in the Prolegnas instrument so that it is quantitatively proportional and has the potential to be completed within 5 (five) years. Because, according to the current design of the term of office, no bills may be passed across periods. However, at a practical level, sometimes a mechanism for drafting laws over time is needed, such as the Criminal Code and Criminal Procedure Code. If so, then using the current design term, the pattern of forming a law which is tied to the term of office of the forming institution is so rigid, or can be deviated as long as it meets certain criteria.

Significant changes in political formation in law-forming institutions will certainly influence the process of law formation because law formation is always influenced by political forces.<sup>25</sup> After all, laws are a form of crystallization of political will<sup>26</sup> and political products so that their formation will always be influenced

by politics.<sup>27</sup> It is the political power structure that will determine how the law formation process takes place.<sup>28</sup>

The political process is not sustainable because the Democrats and the elected president have a different vision, mission and political attitude from their predecessors. This of course has implications for the continuity of legal formation that has been planned or initiated previously. Laws planned in the previous period do not have to be included again in the DPR and President's plans to make laws in the following period. Likewise, bills that have been started in the previous period but have not been completed do not have to be continued by the DPR and the President in the next period. With different visions and missions and political attitudes, it is likely that the bills discussed in the previous period will not continue in the next period, especially if a new law is planned.

Not only that, the provisions regarding the formation of laws must also emphasize the tenure-bound

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<sup>25</sup>Bachtiar, Constitutional Legal Politics: Constitutional Accountability of the President (Yogyakarta: Suluh Media, 2018), p. 36.

<sup>26</sup>Moh. Mahfud MD, Legal Politics in Indonesia, Revised Edition (Jakarta: Rajawali Press, 2014), p. 15.

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<sup>27</sup>Moh Mahfud MD, Political and Legal Struggle in Indonesia (Yogyakarta: Gama Media, 1999), p. v-viii

<sup>28</sup>Daniel S Lev, Nirwono, and AE Priyono, Law and Politics in Indonesia: Continuity and Change (Jakarta: LP3ES, 1990), p. xii

model of law formation as part of the constitutional foundation of the Republic of Indonesia in 1945. Understanding that the national legal system must be built and strengthened on the pillars of Pancasila and the State Constitution Republic of Indonesia in 1945 as stated by Bagir Manan.

In relation to legal politics, seen from its position and nature, the model of law making and binding of rights is permanent legal politics (policy direction). As a permanent legal policy, the formation of laws that are tied to control must always be the basis of the law formation policy itself. More than that, regulations regarding the formation of laws must also strengthen the pattern of forming laws that are bound to the term of office, because this pattern is part of the foundations of the 1945 Constitution of the Republic of Indonesia. It is mandatory for every regulation to be made to strengthen the pattern of forming laws that are bound to the term of office. position, starting from the understanding that the national legal system, as stated by Bagir Manan, must be built based on and to strengthen the foundations of

Pancasila and the 1945 Constitution of the Republic of Indonesia.

*carry over* provision is regulated in Article 71 A of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

*"In the event that the discussion of the Draft Law as intended in Article 65 paragraph (1) has entered the discussion of the Problem Inventory List during the current DPR membership period, the results of the discussion of the Draft Law are submitted to the DPR for the following period and based on the agreement of the DPR, the President, and/or DPD, the Draft Law can be re-entered into the list of medium-term Prolegnas and/or annual priority Prolegnas ."*

The important point in this provision lies in the existence of an agreement between the DPR, the President and/or the DPD to carry over the bill that was discussed in the previous period. This agreement tends to involve the political interests/will of the law-making institutions.

However, regardless of political involvement in its implementation, the provisions of Article 71 A have

opened up wide opportunities for continued law formation up to the enactment stage. Additionally, there is a "reentrancy" clause, indicating that the bill can move forward depending on lawmakers' approval. This means that lawmakers may not agree to include previous bills in the Prolegnas list.

### C. General Principles of Good Government

The concept of good governance is not new, it exists and is as old as human civilization. Simply put, "good governance" means: the decision-making process and the process by which decisions are implemented (or not implemented). The government is one of the actors in implementing good governance. Other actors involved in governance vary depending on the level of government being discussed. In rural areas, for example, other actors may include influential landowners, farmers' associations, cooperatives, NGOs, research institutions, religious figures, financial institutions, political parties, the military etc. The situation in urban areas is much more complex<sup>29</sup>.

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<sup>29</sup>Ridwan Hr, *State Administrative Law* (Pt Rajagrafindo Persada, Jakarta, 2014).

Law Number 30 of 2014 concerning Government Administration was passed as the first law to regulate government administration in accordance with the 1945 Constitution of the Republic of Indonesia and Pancasila. Important matters related to government administration starting from authority, authorization, AUPB, attribution, delegation, mandate, prohibition of abuse of authority, discretion, electronic decisions, permits, dispensations, concessions, conflicts of interest, socialization that must be carried out by the Government, standard operating procedures, conditions for the validity of decisions, legalization of documents, administrative sanctions are clearly regulated.<sup>30</sup>

Good governance has 8 main characteristics, namely participative, consensus-oriented, accountable, transparent, responsive, effective and efficient, fair and inclusive and following the rule of law. This means ensuring that corruption is minimized, minority views are taken into account and the voices of the most vulnerable

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<sup>30</sup>Widjiastuti Agustin. *AUPB's Role in Realizing Clean and Free Government Administration from Corruption*, *Perspective*, 22.2 (2017), 96–110

in society are heard in decision-making. This also includes being responsive to current and future community needs.

Good governance requires a fair legal framework that is enforced impartially. This also requires full protection of human rights, especially the rights of minorities. Impartial law enforcement requires an independent judiciary and an impartial and non-corrupt police force. Meanwhile, transparency means that decisions are taken and their enforcement is carried out in a manner that follows the rules and regulations. This also means that the information is freely available and directly accessible to those who will be affected by the decision and its enforcement. This also means that sufficient information is provided and provided in forms and media that are easy to understand<sup>31</sup>.

Good governance promotes human rights in several ways. It encourages public participation in government, inclusion in lawmaking and policymaking, and accountability of elected and appointed officials. This

allows civil society to be actively involved in policy making and leads to broad representation of societal interests in decision making<sup>32</sup>. In this way, disadvantaged groups, including women and minorities, are empowered to defend their rights. The result is laws and policies that better respect cultural diversity, contribute to resolving social conflicts and tensions, and address the challenges of inequality and poverty.

This research defines *good governance* as the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation. When talking about human rights, we refer to the standards set out in the Universal Declaration of Human Rights and outlined in a number of international conventions that set minimum standards to guarantee human dignity (see box). It explores the relationship between good governance and human rights in four areas, namely democratic institutions, State service

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<sup>31</sup>SF. Marbun, Establishment, Implementation, and Role of General Principles of Decent Government in Realizing Good and Clean Government in Indonesia (Bandung, 2001).

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<sup>32</sup>Muhammad Azhar, The Relevance of General Principles of Good Government in', The Relevance of General Principles of Good Government in the State Administration System, 8.5 (2015), 274–87

delivery, the rule of law and anti-corruption measures<sup>33</sup>.

This shows how various social and institutional actors, from women and minority groups to the media, civil society and state institutions, have carried out reforms in these four areas. When guided by human rights values, good governance reforms of democratic institutions pave the way for citizens to participate in policy making through both formal institutions and informal consultations. They also establish mechanisms for including various social groups in decision-making processes, especially locally. Finally, they can encourage civil society and local communities to formulate and express their positions on issues that are important to them, and lead to legal products that are good and in line with society's needs.

In terms of the rule of law, human rights-sensitive good governance initiatives reform the law and help institutions ranging from the penal system to the courts and parliament to better implement the law. Good governance initiatives can include

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<sup>33</sup>Indroharto, "General Principles of Good Government", contained in Paulus Effendi Lotulung (Ed.), Collection of Papers on General Principles of Good Government, Cet. First, Citra Aditya Bakti, Bandung, 1994, pp. 145-146.

advocacy for legal reform, increasing public awareness of national and international legal frameworks, and capacity building or institutional reform.

#### **D. Comparison of the Formation of Legislative Regulations with Carry-Over Mechanisms in Various Countries**

The legislature has become an integral part of constitutional government. It is a representative body of government in which the will of the people is transferred into the will of a state in the form of laws, which have higher legal force (after the Constitution).<sup>34</sup>

One of them is written in the Irish Constitution, "The National Parliament must be called and known" (article 15). But "there are many interchangeable nouns for parliament and legislature. In English at least there is no single term that includes both words. The word "parliament" comes from the British Parliament. Sometimes other words are used:

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<sup>34</sup>In Spain "*The Cortes Generales* Represents the Spanish People" (Article 66 of the Constitution); The General States Represent the People of the Netherlands (Article 50 of the Constitution): The Hungarian State Assembly Realizes the Rights Arising from the Sovereignty of the People, Secures the Constitutional Background of the Society, Determines the Development of Government (Article 19 of the Constitution).

assembly, congress..., *Riksdagen* and *Stortinget* in Scandinavian languages, *Seim* in Polish.”<sup>35</sup> In this book the terms “parliament” and “legislature” are used “interchangeably as general terms for an elected representative body”.<sup>36</sup>

For example, members of several parliaments can be nominated (the President of Italy can nominate as Senator for life citizens, who have brought honor to the Nation through their outstanding achievements in the social, scientific, artistic and literary fields; Canadian senators are nominated by the Governor General on recommendation Prime Minister). Or they can be *ex officio members of parliament* (in Russia the heads of the executive and member legislative bodies of the Russian Federation are *ex officio members* of the Federation Council); or by the bequest of some members *of the House of Lords of the British Parliament* ).

Legislative powers may be limited (French Parliament, US Congress) or not (UK Parliament). In the United Kingdom the principle of parliamentary sovereignty is

recognized as a central principle of constitutional law. According to him, parliament has the power to make laws without limitation. The limitation is practical law enforcement. As written, the British parliament could adopt a law banning smoke on the streets of Paris – but the question is enforcement. Indeed the British parliament had adopted legislation for the Commonwealth and its acts had extraterritorial effect. But over the years these powers were limited - from *the Westminster Act* 1931 to modern European law having priority over the actions of the British powers and the division of powers between the British parliament and the new parliament of Scotland and the Yales. However, Parliament can still adopt as general acts (as a *Bill of Rights* ) and more concrete ones (as Private acts).

The legislative body performs functions other than legislative (for example, the function of control over executive power). Among other functions of the legislative body, the legislative function may be strong or weak. This depends on the form of government and at least the relationship between legislative and executive powers based on the

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<sup>35</sup>DMOlson. *Democratic Legislative Institutions. A Comparative View* . 1994. P.4

<sup>36</sup>ibid., p.3

principle of separation of powers. Some authors divide legislative bodies into active, reactive, marginal, minimal depending on the active or passive (even decorative) role of the legislative body.<sup>37</sup>

The process of making laws starts from the legislative body. The bill went through a long road and was amended several times before being introduced to the legislature. The question is which part is more important for the future of the bill – the pre-legislative or the one taking part in the legislature. Constitutional oversight bodies (ordinary courts or special courts) play an important role today. They are called 'negative legislators'. The increasing role of constitutional review means the primacy of the constitution over the laws of the legislature.

In the legal literature the issue of lawmaking is one that is under-researched. It is possible to differentiate it from books published in the USA.<sup>38</sup> The most basic book on this matter was written by professor M. Zander "Law-making process".

<sup>39</sup>devoted to the analysis of the law-making process in Great Britain. The process of lawmaking is analyzed in the work of professor Bennion – a former draftsman.<sup>40</sup> The subject of this research is an analysis of the influence of constitutional principles on the law-making process and the role of the legislative body in it. The issue of the legislative process has been studied more widely. There is publication of the legislative process in the national parliament.<sup>41</sup> In this work, a comparative analysis of the legislative process and its stages is made. Regarding constitutional review – in the current legal system, this is the most important element.

The principle of separation of powers recognized by modern legal states determines the mechanism of lawmaking and the position of the legislative body within it. The principle of dividing state power into three branches - legislative, executive and judicial power. Legislative power is vested in the legislature. This principle elects representative bodies and empowers them to adopt laws. The place of the legislature in the

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<sup>37</sup>Hague R., Harrop M. *Comparative Government And Politics*. L. 1987.

<sup>38</sup> *Legislative Law And Process. Cases And Materials* . J. Hetzel. 1980

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<sup>39</sup>Zander. M. *The Law-Making Process* , 1989

<sup>40</sup>Bennion F. *Statute Law* . 1980.

<sup>41</sup>Olson D. *The Legislative Process* . NY 1980.

lawmaking process depends on the character of the principle of separation of powers recognized in a country<sup>42</sup>.

The principle of separation of powers has special characteristics in each country. It may have a firm shape or a flexible shape. The firm form is typical for the US, analyzing the practices of the 'founding fathers' of the American constitution at that time found that the legislature had dominated the position in the republic and it was necessary to limit its power and balance its activities because a government body in the name of the people could constitute a tyranny.<sup>43</sup>

Congress was examined as a possible threat to democracy, as a possible tyranny. According to this model, the main task of a representative body is to make laws. The system of government agencies is organized in such a way that the main task of Congress is to make laws. At the same time each branch of government has the power to balance the others. The President can recommend to Congress to adopt legislative measures and control law enforcement, having veto power.

To balance the legislative body must be divided into two chambers. The division of the legislature was a means of countering the possibility of tyranny. The legislative body has a balanced structure, capable of reflecting social changes (because the DPR is elected every two years, while the senate – 6 years (1/3 is re-elected every 2 years), stability and continuity are guaranteed. This position has been embodied in the United States Constitution. The result, Congress was able to maintain a strong position in the lawmaking process. It was separated from the executive power and the latter had to find different channels (as a political rule) for contact with Congress in the lawmaking process.

In countries where the principle of separation of powers is recognized in a more flexible form (in parliamentary European countries), the legislature is unable to maintain a leading position in the lawmaking process. The executive body cannot be separated from the legislative body because members of the Government can become members as a rule of the lower house of the legislative body. As a result, parliament's legislative

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<sup>42</sup>Cappelletti M. *Judicial Review In Contemporary World*. Oxford. 1971.

<sup>43</sup>Federalist, N 47-49

activities have come under the control of the Government. The latter has the opportunity to coordinate lawmaking through members of political factions in the legislative body. Executive body lawmaking, if power is divided between government bodies and legislative power is in the hands of the legislative body, the question is whether the executive body can adopt laws.

In principle, many scholars from various countries agree that executive body lawmaking is contrary to the principle of separation of powers. But with the increase in executive agency lawmaking in practice, scholars increasingly began to justify this process. Executive agencies' actions are adopted quickly and informally and the pragmatic rationale is important for a complex and changing modern society. Many Constitutions allow parliament to delegate legislative powers to the executive (first of all to the Government).

The constitution demands that the authorization law must be definite, determining the duration of the authorization (Constitution of Portugal, Spain). The concept of delegated power is recognized in

many countries. In Great Britain, according to the principle of parliamentary sovereignty, all legislative power is concentrated in parliament. The executive body can adopt laws only based on powers delegated by parliament. The problem is that it is very difficult to find a plank between the law and the delegated law.

Parliament can delegate power on any question as well as take action on any question. As a result, Parliamentary legislation may be full of details while the main questions may be regulated by the executive. Such practices are known in the US where Congress also delegates powers to the executive branch. Unlike the British Parliament, Congress's powers are limited by the Constitution<sup>44</sup>.

Delegated legislation is considered inferior legislation because it must conform to parliamentary legislation; the terms are interpreted to be the same as the terms of the act by which the power is delegated; abolition of an act of parliament leads to the abolition of all delegated acts adopted in accordance with its provisions.

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<sup>44</sup>Olson D. *The Legislative Process*. NY 1980.

The legislature controls delegated legislation. There are various forms of control. The British Parliament was able to exercise control before and after. To that end, he organized a Committee for the control of delegated legislation which previously examined these acts from the point of view of correspondence with parliamentary legislation. The committee decides whether or not to present the measure to the chamber. Delegated actions can be adopted by negative or positive resolution methods. The chamber can examine legal action for 40 days. If there are no questions it takes effect. In the United Kingdom in 1986 in examining a concrete case, the court may check the correspondence of the delegated act with the act according to which it was created. As a result, the court may declare the act ultra vires - adopted over the powers delegated by parliament to the executive body. The concept of legislative delegation from executive bodies has been adopted in other common law countries <sup>45</sup>.

Countries of the Romano-Germanic tradition considered that the executive body had the same law-making power as the legislative body.

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<sup>45</sup> *Legislative Law And Process. Cases And Materials* . J. Hetzel. 1980

But these actions must be in accordance with parliamentary acts. Sometimes the division of powers between the legislative and executive bodies is not specified and the law has the same force as an act of parliament. The government can also ask the DPR to grant its authority for a limited period of time to regulate through statutory regulations which usually fall within the realm of law.

In Latvia the Government can adopt measures between Seim sessions but they must be approved within three days of the start of the session; otherwise, this act is annulled (article 81 of the Constitution). The Portuguese constitution (article 168) lists legislative powers, which can be delegated to the government. In Italy the Government may not issue decrees that have the force of ordinary law without delegated powers. When in necessary and urgent circumstances the Government issues on its own responsibility temporary measures having the force of law, it shall on the same day submit them for conversion into law to the Chambers which, although they have been dissolved, are expressly called for that purpose and must meet in five days. Such decrees

are invalid from the date of their issuance if they are not converted into law within sixty days of their publication <sup>46</sup>.

In Germany, the federal President may—at the request of the federal Government and with the approval of the Bundesrat, declare a state of legislative emergency in relation to a bill if the Bundestag rejects the bill even though the federal Government has stated that the bill is urgent. If the Bundestag rejects the bill, it is deemed to have become law to the extent that the Bundesrat approves it. The legislative emergency continued for six months. The French Constitution defines the legal domain and separates it from executive regulations (article 34).

The 1958 French Constitution divides power between the legislative and executive bodies. This is the result of strengthening executive power, which is a feature of this constitution. The constitution defines the subjects regulated by parliamentary law and the subjects for which the legislature simply adopts a framework. Subjects of legislation that are not included in the scope of law-making are

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<sup>46</sup>Hague R., Harrop M. *Comparative Government And Politics*. L. 1987.

'reglamentary' in nature. The government has the right to stop the examination of a bill because in its opinion the bill is 'reglamentary' and falls within the power of the executive power (in practice the Council of Ministers does not exercise this right) <sup>47</sup>.

The government can change laws made by parliament but according to the Government it is within its power by decision but with the approval of the Constitutional Council. So the Constitutional Council examines the division between the powers of the legislative body and the executive body within the scope of law-making which according to the constitution is dual in nature - legislative and 'reglamentary'.

## CONCLUSION

The law has higher legal force (after the Constitution). The reason for strengthening the position of the legislative body's actions is in the democratic character of the adoption procedure. In legislative acts, the will of the people is transferred to the will of the state. They are the result of certain political compromises of

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<sup>47</sup>Cappelletti M. *Judicial Review In Contemporary World*. Oxford. 1971.

different social and political interests. To reach a compromise, a special legislative process was established. In this regard, Law Number 30 of 2014 concerning Government Administration, which was passed as the first law to regulate government governance in accordance with the 1945 Constitution of the Republic of Indonesia and Pancasila, states that good governance requires a fair legal framework that is enforced. without taking sides.

In terms of the formation of legislative regulations, the condition of stopping discussion of a bill after the change of the DPR's term of office is nothing new considering that this happens every 5 years. Therefore, a mechanism for "inheriting" bills from the previous period to the next period is needed to ensure the continuity of the bill discussion process or what can be called a "carry-over" mechanism. The "carry-over" mechanism basically has the main objective of continuing the discussion of the bill until it reaches the enactment stage. So that legal certainty for the community does not need to be left in limbo until later periods. Apart from that, this

mechanism aims to avoid fluctuations in the legislative process due to changes in the DPR across periods.

Carry over in the formation of laws in Indonesia, which begins with the process of drafting the Prolegnas as the initial stage of law formation, is closely related to legal politics. Prolegnas, as the first step in determining what bills can be drafted using the *carry over concept*, is a form of legal politics in the formation of laws. It is hoped that the formation of laws through the *carry-over* concept can perfect the process of forming legislative regulations, of course not only paying attention to the effectiveness and sustainability of development planning as outlined in the Prolegnas framework, but also must be in accordance with the formation of good legislative regulations. .

In line with what happened in Indonesia, constitutions in several other countries also require that the authorization law must be definite, determining the duration of the authorization (Constitution of Portugal, Spain). The concept of delegated power is recognized in many countries. In Great Britain,

according to the principle of parliamentary sovereignty, all legislative power is concentrated in parliament. The executive body can adopt laws only based on powers delegated by parliament.

An example is the 1958 French constitution which divides power between the legislative and executive bodies. This is the result of strengthening executive power, which is a feature of this constitution. The constitution defines the subjects regulated by parliamentary law and the subjects for which the legislature simply adopts a framework. Subjects of legislation that are not included in the scope of law-making are 'reglamentary' in nature. The government has the right to stop the examination of a bill because in its opinion the bill is 'reglamentary' and falls within the power of the executive power (in practice the Council of Ministers does not exercise this right).

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