

Evaluation of The Existence of Other Laws and Regulations from The Perspective of Legislative Science

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Abstract

This article is to analyze the existence of other laws and regulations listed in Article 8 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations; which is assumed to be regulation . The current condition is that the legal product in question is in its formation it is very easy and fast to handle state affairs. However, the scope and testing are not yet clear. and the amount is uncontrolled. The main problem of this research; First , in the form of the need to evaluate the characteristics of the legal product contained in Article 8 in the a quo provisions . Second , tracing position law or degree of other laws and regulations with regulation legislation is seen from the perspective of legal science. The method used is classified as normative legal research with a legal and doctrinal approach. Thus, the results of this study explain several important things, namely First , there were findings in the form of differences characteristics between statutory regulations (regeling) and legislative regulations other (policy regulations) or called as a Regulation Policy. The difference in legal status can be measured through several indicators such as the formation, scope or nature and its testing. Both sit down regulation legislation other as regulation implementer to synergize regulations and policies through separation of the position of other laws and regulations to be included in laws which are per se related to government administration with touchstone of General Principles of Good Governance through Administrative Justice.

I. Introduction

The Republic of Indonesia is a country of law, this can be proven with the Indonesian constitution is placed in a position highest in hierarchy regulation legislation. In the hierarchy of legal norms, the constitution a country can be described in form pyramid with position a more norm high; whereas regulation legislation under constitution the is regulation executor or embodiment and not may contradictory from existing regulations on (*lex superior derogate legi inferiori*) (Jimly, 2010). In a country of law, the existence of a pluralistic society need grown method For to form attitude obedience rules, legitimacy and validation rule as well as condition scope, nature and touchstone of the rules in order to realize protection of human rights Man as well as restrictions authority. With thus condition absolute existence a regulation legislation always to list in the form of *the* provisions that yes discuss the formation process legislation (*Construction of buildings*) in frame realize development law national only can come true if supported by the method (*Gesetzgebungs - technique*) and the exact method (*Method of maintenance*) as well as standard for all authorized institution make regulation legislation (Muckhlis, 2017). Indonesia is a country with system law *rule of law*, a system that prioritizes certainty law written which has the impact of many legal instruments or product laws issued by authorities Good *regeling* (regulation), *beleidsregel* (regulation policies) and *beschikking* (decision) state administrative officials), as consequence from implementation a near system without control (Media Regulations and Legislation Publication, "News/Activities of DJPP Legal Obesity, Ministry of Law and Human Rights to Immediately Streamline 62 Thousand Regulations in Indonesia," Ministry of Law and Human Rights of the Republic of Indonesia, 2020).

One of the cause namely existence design with limitation model regulation legislation with legislation others. Limitations intended to differentiate *rules* and regulations others. As ever presented by HAS Natabaya that a regulation legislation own characteristics easy known, there is certainty law there is a process of formation and revocation, and the other side his weakness is legislation in general nature stiff and not yet capable For can adapt with development of the times (HAS, 2008). On the other hand Another, Bagir Manan explained that Regulation Legislation own weaknesses, namely always No flexible, no Once complete For fulfil all incident law or demands law, which in turn cause emptiness law (*rechtvacuum*). Limitation provision

referred to , namely :

- a. The 1945 Constitution of the Republic of Indonesia ;
- b. Decree of the People's Consultative Assembly ;
- c. Laws / Regulations Government Replacement Constitution ;
- d. Government Regulations ;
- e. Regulations President ;
- f. Provincial Regional Regulations ; and
- g. District /City Regional Regulations of the Republic of Indonesia Law, "Article 7 of Law Number 12 of 2011 Concerning the Formation of Legislation." (2011) .

Impact in a way legal with presence design limitation from Article 7 of the Law Number 12 of 2011 is use excessive in Article 8 of the Law Number 12 of 2011 concerning Formation Regulation Legislation in settlement state affairs , even though in provision *a quo* the Not yet own clarity purpose and objectives in a way systemic from material load and ambiguity also in its degree (Ibnu, 2017).

The existence of legal norms outside hierarchy in Article 8 of the Law Number 12 of 2011 concerning Formation Regulation Legislation that is considered as regulation legislation such as : (1) Assembly People's Consultative Assembly , (2) People's Representative Council , (3) Regional Representative Council , (4) Supreme Court , (5) Constitutional Court Constitution , (6) Audit Board Finance , (7) Commission Judicial , Bank Indonesia, (8) Minister, (9) Agency, (10) Institution, (11) Commission at the same level and which is formed through Constitution or Government on Order Law , (12) Provincial People's Representative Council , (13) Governor , (14) Regency /City People's Representative Council , (15) Mayor / Regent , and (16) Village Head or equivalent .

Impact design limitation from Article 7 regarding Article 8 of provision *a quo* own impact other between other :

1. Formed when instructed by the regulations legislation higher degree tall or based on authority , with thus No found existence Regulation legislation other explain the process of its formation , power work , grading as well as level validated (Yahya, 2011).
2. The disharmony between rule One with others in the sector certain as well as overlap overlap and rules exceed authority (Moh Nadir, 2017).

3. Regulation legislation other tend impact on complexity conflictual in its implementation (Chandranegara , 2017).
4. Authority make regulation legislation other as attached instrument to him , then make regulation legislation other increasingly increase without existence coordination with neat between authority One with other as well as potential deviation law (*rechtidee*) (Philippe Nonet and Philip Selznick, 1978) .
5. The lack of the role of central legislators and region to represent the aspirations of the people For fulfil desires or to determine which rules are the people's priority rather than the government's (Chandranegara, 2017) .
6. Positive law in Indonesia does not yet have a barrier between Policy Regulations (*beleidsregel*) and statutory regulations (*regeling*). This is triggered by frequent changes in the order of legal norms from time to time by authorities who have an interest in the implementation of state affairs (Retno, 2009).
7. With ambiguity existence type The legislation in Law Number 12 of 2011 concerning the Formation of Legislation has resulted in existence the confusion of the types of hierarchy that exist in the legal regulatory system caused by the many laws that provide delegation or even authority in government affairs through regulations legislation others which are considered to be more functional and substantive than other laws and regulations (such as PP and Perpres), such as the existence of Ministerial Regulations or State/Government Institution Regulations which are not in the hierarchy of laws and regulations, always dominates the number by authorized officials whose considerations for the existence of this legal product are still unknown .

A number of example regulation legislation others who have scope The same with *regulation* as well as dominate in formation product law in Indonesia , namely : **First : Ministerial Regulation** . From the side scope , Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities can be seen to be in conflict with Regional Regulation of Sumbawa Regency Number 23 of 2007 concerning Customary Institutions. The Regional Regulation contains the order of the Sultan of Sumbawa, the official Statement of the Regent of Sumbawa, which resulted in the clash of the *Cek Bocek Selessek Reen Suri Customary Community* with PT. NNT

which adheres to the Regulation of the Minister of Forestry P.62/Menhut-II/2013 turns out to be contradictory to Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities, so that there is ambiguity, legal dualism in the matter of the same provisions, the impact is the principle of *lex specialis derogat legi generali*, namely the Regulation of the Minister of Home Affairs is stated to be valid while the Regulation of the Minister of Forestry is set aside (Jasardi, 2018). Example other namely the Circular Letter . Circular letter Number 41 of 2020 revises Circular Letter 36/2020 concerning control activity traveling go out area or homecoming activities and or leave for Related State Apparatus business preventive Covid-19 dissemination . A glance product law This just circular that is not have binding power and consistency even sanctions , things This equalize Power his work with product law type Constitution .

Second : from side testing . Supreme Court Regulation , when the Supreme Court regulation is stipulated, it is certainly impossible for the Supreme Court state institution to try a petition for judicial review of the Supreme Court Regulation that it itself has drafted (Zein, 2011). When the Community files a judicial review related to the legal product, the Supreme Court itself will have the authority to test it, because testing a regulation under the law is the authority of the Supreme Court to try it so that democratic values or those that tend to be populist are smaller (Zein, 2011).

Third , from side its nature . Mayor Regulation , Regulation of the Mayor of Samarinda, East Kalimantan Province Number 43 of 2020 concerning Imposition of Sanctions for Violations of the Implementation and Disaster Management in Handling Corona Virus Disease 2019 (COVID-19) with the substance of mandatory use of masks, prohibition of crowds and restrictions on activities and sanctions for violating these provisions (Mayor of Samarinda, 2020). During the Corona virus pandemic, the Indonesian government made various efforts to overcome the impact of the increasingly massive spread of Covid-19 (Nelvitia, 2020).

From various problems that have been exposed above , then furthermore study This will analyze two problem law namely : *First* , in terms of legal impact from presence design limitation from Article 7 of the Law Number 12 of 2011 is the need evaluate characteristics product the law contained in Article 8 in provision *a quo* said . With thus can withdrawn a problem in the

form of what is becoming characteristics regulation legislation other so that own difference with provision *regulation*. When seen from perspective scope nature and its testing? *Second*, the Regulation legislation other sometimes nature hierarchy functional. It means is product the formed on base delegation or authority from regulation on without delegate the proper legal norms. The author can illustrate like Constitution delegate to Regulation Government (formal hierarchy) in in practice, the Law delegate Good direct mupun not in Ministerial Regulations (hierarchy Functional). So that degrees or position of regulatory norms legislation other Not yet own clarity. With thus whether regulation legislation other is Instrument Executor seen in perspective knowledge legislation.

2. Research Method

This research method uses a doctrinal legal form, conceptualized and developed on the basis of the doctrine adopted by the conceptor or developer, shown only in the Position of Policy Regulations used by authorized/administrative officials as legal instruments and has an impact on the dominance of indoctrination, interpretation of the authorities and rigidity with the results of hyper regulation, overlapping rules and potential sectoral egos resulting in inconsistencies with the rule of law, Pancasila values, democracy and Human Rights. The approach used by the author in the study is the statute approach obtained through primary legal materials in the form of legal products both those that are still valid and those that are no longer valid, the historical approach *by* opening past documents related to this study with the intention of helping researchers to philosophically understand the rules of law from time to time. This study includes: primary legal materials in the form of laws and regulations and Policy Regulations contained in Article 7 and Article 8 of Law Number 12 of 2011, secondary legal materials, in the form of papers, mass media statements, writings and articles. Tertiary legal materials, in the form of materials that support primary legal materials and secondary legal materials such as: the Big Indonesian Dictionary, the Legal Dictionary (*Black Law Dictionary*).

3. Results and Discussion

a. Characteristics of Legislation Others Who Have Difference With *Regulation* Seen From Perspective Scope of Properties and Their Testing

Other Legislation as stated in Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation is a regulation that tends to contain one-sided and technical policies by state institutions and the government. There is a difference between legal norms (regulations) which are inversely proportional to the characteristics of policy rules which tend to be more individual, concrete and specific. Whereas in the provisions *a quo*, has generalized that Policy Regulation is part of *regulation* is not quite right. This strengthens the fact that the legislation others are not part of *the regulation* by looking at the provisions in the regulation of the formation of legal norms which state that a rule as recognized in its existence and has binding legal force as long as it is ordered by a higher regulation or is drawn up based on authority. Reasons for statutory regulations others are part of administrative regulations and are ranked below statutory regulations, namely: statutory regulations others are developments in the field of administrative law which combine the forms of *regulations* and *beschikking* with other terms, namely *beleidsregels* or pseudo -*regulations* or policy rules (Saifuddin and Masni, 2015).

Policy Regulations or *Beleidsregel s* are a form of legal product that is born due to the freedom of action inherent in state administrators, which is commonly referred to as freedom of action or discretion or *Freies Ermessen*. (Philip, 29183).

Thus, according to Laica Marzuki in Philipus M Hadjon, there are three components which are the characteristics of a Policy Regulation, namely:

1) **Subjectum Components ;**

Created by a state administrative body or official as a manifestation of the use of *Freies Ermessen* or discretion in written form which is announced and then binds citizens.

2) **Material Components (Substance) ;**

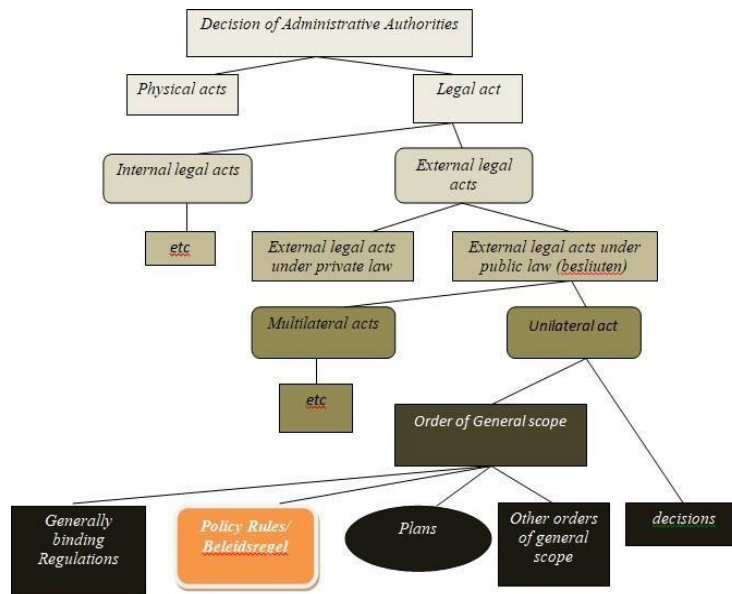
The content of the Policy Regulation contains separate general rules which go beyond the scope of the rules of the statutory regulations for which operational arrangements are made when the content of the statutory regulations is incomplete, non-existent or unclear.

3) **Authority Components ;**

body or official that issues the Policy Regulation does not have statutory authority, but indirectly binds citizens as is the case with legal regulatory rules.

The term "based on authority" means that authorized officials have free action (*discretion*) to formulate rules according to the needs of the official himself. The characteristics of Policy Regulations tend towards technical implementation which is part of discretion, unilateral, special, concrete which is more dominated by administrative officials even though its scope can be general, based on Legislation with General Principles of Good Governance (AUPB) as one of the touchstones of discretionary actions from the government, its existence is very necessary, so that the existence and function of discretion are not in vain for the wider people depending on the intentions of the authority .

The regulations included in State Administrative Law are described in a scheme by Jack Kleikne which outlines the actions of the Government (Jack Kleikne, 2009) :



Source: Data processed

Figure 1. Government Action Scheme According to Jack Kline .

Based on the scheme above, the various types of government actions can be described as follows:

- a. Real/physical/ factual actions and legal actions.
Legal actions include:
 - 1) Legal action to in (internal)
 - 2) External legal action
- b. Exit legal actions include:
 - 1) Private legal action.
 - 2) Public legal action.
- c. Law Action :
 - 1) (multilateral) action
 - 2) Unilateral/one-sided action (unilateral)
- d. Unilateral/one-sided action in the general scope or decision/policy (concrete-individual-final)
- e. Decisions/policies in the general scope include:
 - 1) General binding regulations.
 - 2) Policy Regulations (*beleidsregel*).
 - 3) The plans
 - 4) Decisions in other general areas.

Theoretically, State Administrative Law recognizes the concept of *Beleidsregel* as a product of discretionary law. In practice , the binding power of Policy Regulations has actually expanded. Bagir Manan stated that Policy Regulations are not directly legally binding , although they still contain legal relevance. Ideally, Policy Regulations are only binding for state administrative bodies or officials themselves. Although the provisions in Policy Regulations usually indirectly concern the general public (Bagir and Kuntana, 1987).

The presence of *the regulations* which are legal acts in a series of State Administrative Law acts , means that the General Principles of Good Governance (AUPB) have a dual role: *First , it is a source of norms for government actions in addition to written and unwritten*

norms. *Second*, AAUPB is a basis for suing, and finally is a basis for testing government actions in the administrative field to be canceled or not by the judge (Indroharto, 1991), (Dyah, 2016).

Thus there is strong reason For evaluate position law Legislation other is not part of the criteria of statutory regulations, although some apply to the general public. Policy Regulations are also not State Administrative Decisions because they are addressed to specific people (concrete-individual) (A'an and Fredy, 2019).

Van der Vlies stated that Policy Regulations are not statutory regulations because Policy Regulations generally do not apply abroad. This is because Policy Regulations are issued by the creator or organ/ officials who do not have the authority from the law for regulations that bind the public interest. This regulation can be made when an organ has free authority (*droit function* / discretion) over the authority of a particular law, or to further fill the space for maneuver in government affairs or certain field affairs (IC Van Der Vlies).

Beleidsregel and *regeling* have differences with the following description:

- a. The final decision of an administrative judge on a decision (*beschikking*) that is being disputed is not directly based on the Policy Regulation. The grounds for testing for administrative judges are given in a *limited manner* in the relevant law. The grounds for testing only mention violations of statutory regulations and not violations of the Policy Regulation. If the judge confirms that there is a violation of the Policy Regulation, then the final decision will be formulated in the form of a test based on the General Principles of Good Governance. A decision issued in conflict with the Policy Regulation is generally annulled due to violations of the principles of giving reasons (*motivering*), the principle of legal certainty or the principle of equality.
- b. In general, Policy Regulations are tested against the General Principles of Good Governance, or more generally, against unwritten legal principles.
- c. When the authority makes a decision based on the Policy Regulation, the government is obliged to investigate whether the Policy Regulation in a particular case can be a reason to deviate from the Policy Regulation. In general, the deviation is beneficial to the party concerned. (repressive/autonomous). However, it is not impossible that in certain circumstances and if the principle of legal certainty is not violated, the deviation is a deviation that is detrimental to the party concerned.
- d. A new law can be implemented after it has been announced; for Policy Regulations, it is sufficient if it is known to the public.

However, Both also have similarities, namely:

1. Regarding the provision of reasons for a decision given, usually in both cases it is sufficient to submit arguments based on what is stipulated in the regulation. However, for the application of Policy Regulations it is necessary to state why in a particular case there is no special circumstance that justifies a deviation from the regulation.
2. Everyone is deemed to know the Policy Regulations and laws and regulations that are announced.
3. A Policy Regulation meets certain criteria, regardless of whether it concerns policies outlined in a Policy Regulation or legislation. The most important criterion is that it must be supervised for the sake of legal certainty for the parties concerned.
4. The human rights granted in international conversion may be limited either by Policy Regulations or by laws. However, restrictions by Policy Regulations must not be arbitrary "*bertuuzong*".

Regarding the authority to create Policy Regulations, Philipus M. Hadjon stated:

“Policy regulations are not statutory regulations . The agency that issues Policy Regulations , *in casu* does not have the authority to create Policy Regulations (*wetgevendebevoegheid*) . Policy regulations will provide opportunities for how a State Administrative Agency exercises government authority (*beschikking bevoegheid*) . This is done with the use of discretionaire , *because otherwise, there is no place for Policy Regulations (Hadjon , 1983)*”.

According to Bagir Manan, Policy Regulation is not a statutory regulation even though it shows the nature or symptoms of statutory regulation because the maker of Policy Regulation does not have the authority of statutory regulation. The authority possessed is only limited to aspects of implementation and there is no authority to regulate (*wetgever*) (Manan and Magnar, 1997) .

Policy Regulations are not statutory regulations, so the principles of limitation and testing of statutory regulations cannot be applied to Policy Regulations (Manan and Magnar, 1997) . Policy regulations cannot be tested *wetmatigheid* (supervision with a touchstone on statutory regulations), because there will be no statutory basis for the decision to make Policy Regulations. Policy Regulations are made based on *freies ermessen / droit function* and not the authority to make laws and regulations. Testing of Policy Regulations is more directed at *doelmatigheid* (free authority/freedom to act) and therefore the touchstone is the General Principles of Good Governance (Manan and Magnar, 1997) .

The Republic of Indonesia adheres to the rule of law legal system , a product law *policy rules* is new and unpublished regulations There is law positive that to explain related characteristic scope and testing , although actually competence absolute is at the State Administrative Court .

Viktor thinks there is an inconsistent attitude in element testing regulation legislation others , where There is confusion on the part of the Supreme Court in conducting *judicial review of regulations* under the law, the reason being that the Supreme Court interprets its authority in testing various laws and regulations / policies by referring to the substance of the regulations. (Victor Imanuel, 2013) . If the substance is regulatory in nature as per the laws and regulations under the law (Article 7 and Article 8 of the Law) . *a quo*) because both are the same called as delegated *regulation*. Thus the author assumes that the Supreme Court conducts a material test on a regulation under the law based on the type of substantive or functional hierarchy that is indeed required in government affairs. So that in the science of legislation related to the order of legislation moment this no longer refers to formal hierarchy.

Therefore, Viktor made two formulations as a prescription for the Supreme Court's authority in testing statutory regulations . others / *pseudowtgeving / legal policy/ beleidsregel* :

- a. The Supreme Court (MA) continues to conduct *Judicial Review* of Policy Regulations by referring to Law Number 12 of 2011 which provides limitations on statutory regulations. In this case, the MA does not need to be given explicit authority to test Policy Regulations.
- b. The Supreme Court is given the authority to review Policy Regulations , so that the Supreme Court can not only review regulations in the form of statutory regulations as limited to Law Number 12 of 2011, but can also review regulations in the form of circulars. announcement, MOU, guidelines / procedures , and instructions .

When the second option is taken, it will actually blur the difference between legislation

and Policy Regulations. Both will be considered equal and have the same position. Consequently, there is no longer a term for formal legal norm hierarchy, but rather substance/functionality. like statement above , the norm maker freely determines and interprets legal acts to form norms according to his needs (repressive). Therefore Viktor does not agree with the opinion of Abdul Latif who interprets it grammatically (Manan and Magnar, 1997). With the conclusion that Policy Regulations as decisions that are regulatory and indirectly binding and have a lower level than laws (*delegated regulations*) can be tested materially by the Supreme Court (Abdul Latief, 2005) .

Looking at the first idea used, the Supreme Court's material review of Policy Regulations can only be carried out on Policy Regulations in the form of Legislation , namely Legislation which is formed on the basis of authority/discretion . Because the regulation is born from authority/discretion , the basis for testing cannot be limited to the existing statutory regulations above it.

Regulation legislation others are based on authority/ discretion, then the touchstone for testing also needs to be based on principles or principles in governance or the formation of rules, for example, for regulations formed based on authority referring to the General Principles of Good Governance (AUPB) (Victor Imanuel, 2013).

Indonesian Positive Law does not yet regulate the testing of Policy Regulations by the judiciary or any other institution, so politics the law that should be carried out by the authorities is prioritizing legal protection for the implementation of Policy Regulations by characteristics only as instructions, guidance and guidelines or directions from superior officials to subordinates with an internal scope (*interne regeling*). Policy Regulations in the current development model contain prohibitions and orders as well as giving sanctions to the general public which is clearly not within the capacity of the Policy Regulation. When the public is forced by the authorities to follow the course of the policy regulation , then the government has taken action (*ultravires*) that is detrimental to the people, so ideally the government's actions (currently considered factual actions) are liable for the government's actions.

In order to realize benefits, certainty and justice , then there is also the concept of accountability to the government, where this concept is very broad, the government should provide a certain amount of compensation or recovery to *its citizens for losses resulting from government actions* , both directly and indirectly, materially or materially, regarding the neglect of its citizens' rights (Yoong Zhang, 1999) . In the context of losses caused by the implementation of Policy Regulations, lawsuits against the government cannot be filed through administrative courts . Therefore, an alternative way to file a lawsuit against the government can be done through general courts on the basis of unlawful acts by the government (*onrechtmatig overheidsdaad*) (Yoong Zhang, 1999) .

Utrecht argues that supervision of policies in a government action (*doelmatigheidscontrole*) cannot be handed over to judges, but is in the government ranks themselves. The reason judges are not allowed to assess policies is because by assessing government policies , judges are as if they are sitting as executives. Judges may assess if in the government action there is suspected action that exceeds authority or is arbitrary. As in Utrecht's opinion, Laica Marzuki in Enrico Simanjuntak, a person or civil legal entity cannot challenge the policy regulation before a judge. The reason is, the court institution cannot try the policy (Enrico, 2011) . This is what makes the Indonesian state limit in trying the government's actions based on the limited *onrechtmatigeover - heidsdaad policy*

(limitation). Because the principle of legism is so strict, positive law has not been able to reach the development of regulations. This can be proven by the presence of Circular Letter dated February 25, 1977 No. MA / Pemb / 0159/77 which states that the actions of the ruler's policy are not included in the competence of the court to assess it, unless there are elements of arbitrariness and abuse of authority (Hadjon, 1983) .

BJ Schueler has a different opinion regarding the concept of strict limitations in policy supervision. According to him, the limitations of the judge's authority as a result of the judge's inability to assess aspects other than *rechmatigheid* make the ever-growing administrative disputes that are in dispute unable to be resolved (Simanjuntak, 2011) . And this does not mean that Policy Regulations that conflict with the regulations above are ignored. In fact, responsive regulations have the principle to continue to straighten out their deviations (repressive laws).

Looking at the United Kingdom and the United States, where the Policy Regulation is perceived to be able to be tested with the provision that the Policy Regulation is contrary to Human Rights (Firdaus, 2011), (Cholidin, 2020). The concept Responsive - based regulation also has a principle, namely, even though it has the form of Policy Regulations only, if in practice the authority through Policy Regulations acts arbitrarily or is contrary to the Constitution , then the existence of the product it is appropriate to test the material at the Constitutional Court.

Policy Regulations can also be tested in court with their material content, for example, the material content of the regulation should include the valid rules or Legislation , but the related party instead includes it in the Policy Regulation along with prohibitions, orders and even sanctions, thus it can also be tested in terms of its formal Circular Letter dated February 25, 1977 No. MA/Pemb/0159/77. The policy regulation test is carried out using court procedures which can be implemented if there is abuse of authority and there are elements of arbitrariness or exceeding authority because Article 21 Paragraph (1) and Paragraph (4) of Law Number 30 of 2014 concerning State Administration states that: 1) You must not exceed the limits of authority, 2) You must not mix up your authority, 3) You must not act arbitrarily.

Thus, in fact the Regulations legislation other or The Policy Regulation has fulfilled the elements of government administration and is worthy of being tested by the State Administrative Court, because the author has conducted a number of studies with the following results:

- 1) There are examples of violations by Indonesian authorities in the practice of using Policy Regulations in the form of *detournement povuir* and *ultra vires* .
- 2) The existence of the formation of Policy Regulations is based on authority through interpretation of authority.
- 3) Policy Regulation is the government's freedom even though it does not have a *decree* . So it is difficult for judges to prosecute it.
- 4) The Policy Regulation itself is not included in the formal hierarchy in Indonesian positive law, but rather is included in the type of functional hierarchical norms that arise due to delegation and authority , so that the position of the legal order in Indonesia is ambiguous.
- 5) Policy regulations in terms of scope are basically rules that fill the gap in stagnant government law (residue theory).

For the future, Indonesia should have a law that regulates administrative law in general, such as *the Algemeen Wet Bestuurrecht* (AWB) owned by the Netherlands and *the Administrative Procedure Act* (APA) in the United States. In this law, the position of Policy

Regulations or their forms, and factual actions and legal protection for their implementation can be regulated and not only regulate State Administrative Decisions (Victor Immanuel, 2013) . Likewise, the formal law in Law Number 5 of 1986 concerning the State Administrative Court in Article 1 Paragraph 3 and Paragraph 4 is still limited, where the object of the dispute is only in the State Administrative Decision (*Besshikking*) . Whereas as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, it aims to realize a prosperous, safe, peaceful, and orderly state and national life, which guarantees equal standing of citizens before the law, and which guarantees the maintenance of harmonious, balanced, and harmonious relations between the apparatus in the field of State Administration and citizens. Thus, the existence of Policy Regulations can be accommodated by material and formal law in positive Indonesian law.

With Thus in the future the statutory regulations need evaluated its position is in Article 8 of the Law *a quo* . Although product This has the intention of filling legal gaps, vague norms and avoiding government stagnation and is an option , but Legislation others are born as a result of the interpretation and creativity of officials which are temporary in the form of implementing instructions and technical instructions. However, in reality, the laws and regulations other or regulation attendance policy in characteristics characteristic scope and testing enter in State Administrative Law Cluster and the rules and not the only government action, but the presence of Policy Regulations in the Law in question together with State Administrative Decisions and factual actions (David, 2001) . As the Author presents in channel action government under This :

2. Other Legislation It is Instrument Executor Seen in the Perspective of Science Legislation

Policy Regulations according to Abbott and Snidal include instruments that are not laws (*primary legislation*) or implementing regulations (*secondary legislation*), and Policy Regulations are produced by departments or institutions or agencies, non - governmental public bodies and certain independent bodies. Compared to Legislation, Policy Regulations have characteristics; some contain few legal obligations, are written in imprecise language, and have less possibility to delegate their interpretation or enforcement to independent third parties, such as the courts (David Pocklington, 2015). Imperative ones are also commonly referred to as coercive laws (*dwingendrecht*). or Doe in David states that Legislation produces something that is coercive in nature (*coerce results*) , while Policy Regulations are optional in nature, distinguishing between legal norms that regulate (*regelendrecht*) and legal norms that add to (*aanvullendrecht*) and recommend (*persuade results*). Sometimes there are also legal rules that are mixed in nature or which are both mandatory (*dwingende*) and regulatory (*regelende*) (David Pocklington, 2015) .

For the author, the position of *the policy regulations* currently only limited to the implementation that is categorized as material content that further regulates the regulations above it . Therefore, administrative bodies in carrying out their duties must act in accordance with the Policy Regulations. Deviations can only be made in "special circumstances" But the above will be good in its implementation when it is regulated in advance in a law *per se* related to state administration. Thus according to EA Alkema in Jeroen MJ . Chorus, it is commonplace that Policy Regulations in Indonesia need to change the perspective of the authorities who always use Policy Regulations beyond laws and other implementing regulations (PP, Perpres) to become guidelines for the government and its ranks, especially

where the authorities have quite broad *droit function powers*. For the author, The ideal legal construction in placing policy regulations in the context of the legal system as people-based regulations is the return of *beleidsregel* as regulations which are merely guides (directives) for ongoing free actions/implementing regulations. (*delegated delegation*) or (*sub delegation regulation*) from (*primary legislation*) and (*delegated delegation*) which carries a mission for the public interest (*bestuurzong*) and is a signpost for authority not to act repressively or autonomously .

Initially, the *policy regulations* were only intended to have internal effects (*interne regeling*). However, in Indonesia, in practice, they tend to be announced to the public through official or unofficial announcements, while the contents are sometimes technical in nature, such as technical instructions, guidelines for the implementation of government practices (EA Alkema, 2006) . Policy Regulations are different from generally binding Legislation. Policy Regulations are not made based on the power to make Legislation , but are accepted and followed by authorized bodies or officials in exercising their discretionary powers (EA Alkema, 2006) . The Policy Regulation determines how discretionary powers can be exercised. When implementing the Policy Regulation in question , there are several things that are conditions for the implementation of actions carried out by authorized government agencies and/or officials to be based on discretion: namely referring to the Laws and Regulations , and the General Principles of Good Governance . By paying attention to the principles of legality, legal protection and AUPB , This means that the Positive Law of Indonesia related to government administration has consistency regarding the importance of government actions to provide protection guarantees to every citizen through filing objections, appeals and lawsuits. In addition , it also specifically actualizes the constitutional norms of the relationship between the state and citizens. Because this instrument is an important part of a democratic state of law. Where the actions of the government or state administrators, both from the executive, legislative and judicial powers , can be tested through the courts. These are the ideal values of a state of law.

4. Conclusion

From the description and analysis problem above, then can withdrawn conclusion as following Existence Regulation legislation others listed in Article 8 of the Law Number 12 of 2011 concerning Formation Regulations Legislation is a legal norm that has role big in organizing government. This is can rated as easy rules made and able accommodate problem statehood. Legal norms this is also very easy and fast in its formation following with its implementation. With thus characteristics regulation legislation other own element like regulation policy/regulations. So that has looks difference with regulations that are indeed need existence evaluation related position policy rules in the Constitution *a quo*. That is of course has designed as product law nuanced discretion, unilateral, special (*interne regeling*), concrete as well as created and executed by officials or administrative body. Besides that, the foundation its formation based on the Regulations Legislation and General Principles of Good Governance (AAUPB) as well as become materials and test stones in Justice administration. Legislation other (*policy regulations*) its position appropriate is at under the regulatory norms that play a role limited to executor For arrange more carry on the regulations above it. Construction the ideal law is placed policy rules as regulation guide (directive), regulations executor (*delegated delegation*) or (sub delegation regulation) to regulations that are in place as primary legislation and *delegated delegation* which brings mission For interest general (*bestuurzong*) as well as is

become signs authority For No act repressive or autonomous.

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