

# The Dynamics of the Importance of Socialization of Legal Products on the Existence of Legal Products in Indonesia Against Law Number 11 of 2020 Concerning Job Creation<sup>1</sup>

La dinámica de la importancia de la socialización de los productos legales en la existencia de productos legales en Indonesia en contra de la Ley número 11 de 2020 sobre creación de empleo

A dinâmica da importância da socialização de produtos jurídicos na existência de produtos jurídicos na Indonésia em relação à Lei nº 11 de 2020 sobre criação de empregos

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## Abstract

It is normative juridical legal writing, which is doctrinal and utilizes legal materials as the focus and subject of analysis. This writing employs primary and secondary legal materials, including books, journal articles, websites related to legal effectiveness, and non-legal materials such as legal dictionaries. As one of our subsystems, the law is undoubtedly expected to apply and function in society, which is the purpose of the law itself. The role of law in society is as essential as law-making, law discovery, and law enforcement. Legal effectiveness in legal socialization must be interpreted from two aspects: the preventive aspect, where legal effectiveness is observed in the formation of laws and regulations. If the formation, such as the Job Creation Law, is later altered, this will inevitably create confusion in the community.

**Keywords:** dynamics, legal product socialization, job creation.

## Resumen

Es una escritura jurídica normativa, que es doctrinal y utiliza materiales jurídicos como foco y estudio de análisis. Este escrito utiliza materiales legales primarios y secundarios, incluidos libros, artículos de revistas, sitios web relacionados con la efectividad legal y materiales no legales que consisten en diccionarios legales. Como uno de nuestros subsistemas, se espera sin duda que la ley se aplique y funcione en la sociedad, como es el propósito de la ley misma. La labor del derecho en la sociedad es tan esencial como la elaboración, el descubrimiento y la aplicación de la ley. La eficacia jurídica en la socialización jurídica debe interpretarse desde dos aspectos, a saber, el aspecto preventivo; La eficacia jurídica se ve en la formación de leyes y reglamentos. Si la formación, como la Ley de Creación de Empleo, se vuelve a cambiar posteriormente, por supuesto, esto creará confusión en la comunidad.

**Palabras clave:** dinámicas, socialización de productos jurídicos, creación de empleo.

## Resumo

É a redação jurídica normativa, que é doutrinária e usa materiais jurídicos como foco e estudo de análise. Essa redação utiliza materiais jurídicos primários e secundários, incluindo livros, artigos de periódicos, sites relacionados à eficácia jurídica e materiais não jurídicos que consistem em dicionários jurídicos. Como um de nossos subsistemas, espera-se, sem dúvida, que a lei se aplique e funcione na sociedade, como é o propósito da própria lei. O trabalho da lei na sociedade

é tão essencial quanto a criação, a descoberta e a aplicação da lei. A eficácia jurídica na socialização jurídica deve ser interpretada sob dois aspectos, a saber: o aspecto preventivo; a eficácia jurídica é vista na formação de leis e regulamentos. Se a formação, como a Lei de Criação de Empregos, for posteriormente alterada novamente, é claro que isso criará confusão na comunidade.

**Palavras-chave:** dinâmica, socialização de produtos legais, criação de empregos.

## Introduction

Legal science is conceptually the same as other sciences when viewed through the lens of science. However, the concept of science in law is distinctive and different from the general concept in the natural sciences. In this case, legal science has become a distinctive and exceptional science because the application of natural science methods classifies it as a social science.

First, on the one hand, according to the positivistic school, legal science must be separated from the relationship between law and morals so that legal science is not considered a science, as only empirical legal sociology and empirical legal theory are, in a narrow sense, sciences. At the same time, others include educated legal expertise (*rechtsgeleerdheid*). Second, according to the normative school, legal and moral correlations should be separated so that each legal theory, in a broad sense, can become a science (Darmadi, 1998). The law, as one of the means by which humans achieve common goals, must be appropriate and relevant to human needs. In this case, the law must be related to the results of human creation, taste, and karst (Oka, 2021).

The state exists as an institution created by society to ensure order, affirm society's rights, and provide protection and security; it is given the authority to make laws. The process of lawmaking is undoubtedly based on the fact that the community has relinquished its right to create laws to the state. Therefore, in the name of entrusting the people's confidence to the state, the state has legitimately obtained the authority to make laws. The state's authority to legislate cannot be interpreted as the state making laws freely and at will (Kusumohamidjojo, 2016).

This essay seeks to analyze aspects of legal effectiveness from the perspective of legal philosophy. The perspective of legal philosophy is interpreted as an effort to explore, reflect on, and provide critical questions regarding the problem of legal effectiveness, which, in legal dogmatics, is commonly considered a *status quo* and something that has typically occurred.

## Method

It is normative juridical legal writing, which is doctrinal and utilizes legal materials as the focus and subject of analysis (Susanti and Efendi, 2015). This writing uses primary and secondary legal materials, including books, journal articles, and *websites* related to legal

effectiveness, as well as non-legal materials consisting of legal dictionaries. The approach in this writing is based on legislation, concepts, and philosophy. The three types of legal materials are inventoried to obtain a comprehensive prescriptivestudy of the legal issues discussed in this writing. This writing systematically examines the concepts or ideas that guide the researcher's perspective in drawing conclusions or analyzing the legal content studied.

## **Discussion**

### **Dimensions and Dynamics in Legal Products**

As one of our subsystems, the law is undoubtedly expected to apply and function in society, which is the purpose of the law itself. The operation of law in society is as crucial as lawmaking, law discovery, and law enforcement (Faizah, 2020). The operation of law in society is expected to ensure that the law works according to its function, namely, to bring about fair order. To achieve fair order, the aspect of legal enforceability becomes essential, as it is in this aspect that the law blends and merges with society as a ground for legal struggles to realize justice.

According to Lawrence M. Friedman, the three elements of the legal system are legal substance, structure, and culture. Legal culture is an aspect that is internal to society, including the collective awareness and understanding of the community regarding the law, so that the law is implemented in everyday life as part of routine activities in society (Soekanto, 2004).

Talcott Parsons' cybernetics theory asserts that the operation of law in society is related to four other societal subsystems: political, social, cultural, and economic. The relationship between law and societal subsystems, such as social, political, cultural, and economic subsystems, as described by Talcott Parsons, shows that law has an important position and a significant impact in supporting the validity of other societal subsystems (Ilyas et ál., 2021).

Restrictive legal effectiveness is a form of legal effectiveness based solely on the effectiveness of laws and regulations in society. C.G. Howard and R.S. Mummers believe that legal effectiveness can only be observed and analyzed in favorable legal products, such as laws and regulations.

The ideas of C.G. Howard and R.S. Mummers, which are related only to the effectiveness of laws and regulations, have ten analytical bases to assess whether a law is declared effective in society, namely (Rahmat and Fadli, 2018):

The relevance of law and regulation to the needs of society. Law is called effective if the making of a law is a crystallization of the wishes and needs of the community;

The severity of a sanction in laws and regulations must be balanced with the offense and not against decency in society;

Law enforcement agencies are always to enforce and process violations of existing laws and regulations;

The existence of moral norms that are obeyed, adhered to and prevail in society are recognized and applied in laws and regulations;

The professionalism of law enforcement officers in processing violations of laws and regulations;

Legislation enacted in the community also needs to consider the local community's socio-economic aspects.

Firm and precise formulation of laws and regulations so that they can be understood and implemented by the community;

Periodic socialization of laws and regulations that will apply in the community;

Affirmation of the prohibiting nature of the law is because the community more easily implements the prohibiting nature of the law than the mandatory nature of the law;

The sanctions of a law and regulation must be firm, clear, and easily understood by the public;

Achmad Ali argues that the effectiveness of the law, which is reduced solely to the effectiveness of positive law—in this case, legislation—is inappropriate because the law cannot be limited to written rules in the form of laws and regulations (Ali, 2015). This is emphasized by Satjipto Rahardjo, who states that the law cannot be reduced merely to a positive legal framework; it must be viewed as a framework of ideas, community culture, and the nation's legal ideals, serving as a philosophical basis for the enactment of laws.

The dimension of legal effectiveness in positive law in Indonesia always requires the socialization of new regulations. This is evidenced by state news and state sheets, which are part of the administrative aspects of legal instruments, primarily written regulations.

Law No. 12/2011 on the Formation of Legislation regulates the promulgation process. Presidential Regulation No. 87/2014 also governs the publication and socialization of laws and regulations. Regarding the duties and authorities of institutions, the State Secretariat and Cabinet Secretariat carry out dissemination, as this has become integral to their functions and obligations through a series of stipulations and the ratification of laws and regulations by the President.

Although access to legal products through the Internet is provided, it still needs improvement, one of which is the promulgation of laws using the *omnibus law* or *omnibus bill method*. The *omnibus law* or *omnibus bill method* is a process of forming legislation that is *multi-statutory in nature*, meaning that one law can be interrelated with another law. In this case, interrelatedness also occurs when a law revises, annuls, or replaces more than one law. For example, Law Number 11 of 2020 concerning Job Creation revises more than 70 laws that are

substantially related to the Job Creation Law. The Job Creation Law also affirms the delegation of regulations or further arrangements in Government Regulations (Kartikasari y Fauzi, 2021).

While the Government Regulation is still being socialized and drafted, the Constitutional Court, through Decision Number 91/PUU-XVIII/2020 on Thursday, 25 November 2021, conducted a *Judicial Review of Law Number 11 of 2020* concerning Job Creation submitted by six applicants. The ruling states two things: first, that Law Number 11 of 2020 concerning Job Creation is formally contrary to the 1945 Constitution of the Republic of Indonesia; and second, that Law Number 11 of 2020 concerning Job Creation is declared conditionally unconstitutional, meaning that changes must be made within a maximum of two years to comply with the formal aspects of the formation of laws and regulations. Moreover, Law Number 11 of 2020 on Job Creation, which amended more than 70 laws, was further amended by Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments. The amendments to Law Number 11 of 2020 on Job Creation and its implementing regulations have created public confusion. Additionally, the Constitutional Court Decision Number 91/PUU-XVIII/2020, which confirmed the conditional unconstitutional status of Law Number 11 of 2020 on Job Creation, has been exacerbated by the amendments made to some of the substance in Law Number 11 of 2020 on Job Creation through Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments, creating further complexity and confusion in the community. The general public, and even institutions responsible for socializing the law, require clarification on how to proceed with the socialization.

Based on the description above, the dimension of legal effectiveness in legal socialization efforts must be interpreted from two aspects: the preventive aspect, where legal effectiveness is seen in the formation of laws and regulations, and the repressive aspect. If the formation, such as Law Number 11 of 2020 concerning Job Creation, is later amended, it will create confusion in the community. Therefore, the planning for the formation of laws and regulations must be precise, as it is also related to their effectiveness. Furthermore, in the repressive aspect, the use of the *omnibus law* method must be accompanied by legal reasons and needs. The omnibus law method has conditions or parameters for forming laws and regulations. If a law is forced to be created using the *omnibus law* method but lacks legal relevance, it is formally rendered defective.

### **Definition of Legal Philosophy, Legal Effectiveness and Community Culture in the Philosophy of Law Perspective**

In some literature, legal philosophy is described as a modern discipline that analyzes prescriptive concepts related to jurisprudence. Legal philosophy is synonymous with legal theory, the philosophy of law, or *rechtsfilosofie*. The definition of legal philosophy also varies among different opinions. Some say that legal philosophy is a science, some consider it theoretical philosophy, some argue that it is applied philosophy or practical philosophy, and some say it is a subspecies of ethical philosophy, and so on.

Several terms in the Philosophy of Law are known in foreign languages. In England, two terms are used: Legal Philosophy and Philosophy of Law. In the Netherlands, two terms are also employed: *Wijsbegeerte van het Recht* and *Rechts Filosofie*. In Germany, the term *Filosofie des Rechts* is used. The term Philosophy of Law in Indonesian is a translation of the term Philosophy of Law or *Rechts Filosofie*. According to Mochtar Kusumaatmadja, it is more appropriate to translate Philosophy of Law as the equivalent of Philosophy of Law or *Rechts Filosofie* rather than Legal Philosophy. The term Legal in Legal Philosophy has the same meaning as law or official matters, making it less appropriate to use the same terminology as Philosophy of Law (Aprita y Adhitya, 2022).

Regarding the conditional unconstitutional status of Law Number 11 of 2020 on Job Creation, there have been several implementing regulations that cannot be enforced as a legal result of this status. This situation is exacerbated by Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. Law Number 11 of 2020 on Job Creation could be more effective, but it has instead caused confusion within the community. Concerning the ineffectiveness of Law Number 11 of 2020 on Job Creation, legal philosophy needs to be examined, particularly regarding the legal postulate which states “*Presumptio iures de iure*”, meaning that without exception, everyone is considered to know the law (Adriadi et ál., 2021). The question in legal philosophy is whether these legal postulates and adages can be applied in the case of Law Number 11 of 2020 on Job Creation, which can be said to be ineffective and causes confusion in the community. In this context, legal effectiveness is also related to the nature and character of the legal postulates and adages. *Ignorant jurists are not excused*.

Regarding the legal postulates and adages, the author argues that the *Ignorantia juris non excusat* postulate does not apply absolutely. It should be limited by the legal principle, which states that *Lex nemini adimere potest is impossible and* that the law does not compel someone to do something impossible. In the case of Law Number 11 of 2020 on Job Creation, there are many implementing regulations with conditionally unconstitutional status, and some of the substance was changed through Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments. This has confirmed that Law Number 11 of 2020 on Job Creation has the potential to confuse the community and is challenging to implement.

## Conclusion

Legal philosophy is a modern discipline that analyzes prescriptive concepts related to jurisprudence. It is synonymous with legal philosophy, the philosophy of law, or *rechtsfilosofie*. The definition of legal philosophy encompasses various opinions. Some consider legal philosophy to be a science, while others view it as theoretical philosophy; some argue that it is applied philosophy or practical philosophy, and some say it is a subspecies of ethical philosophy, among other interpretations. The legal culture of a community that perceives the law with an

orientation toward benefits for the community needs to be emphasized in legal socialization. Legal socialization often intimidates people with the threat of sanctions for violating or disobeying the law. There needs to be an understanding of the legal culture within the community; that is, the community must be educated on the benefits they will gain by obeying the law. The effectiveness of the law in legal socialization efforts must be interpreted from two aspects: the preventive aspect, where the effectiveness of the law can be observed in the formation of laws and regulations. If the formation, such as the Job Creation Law, is later amended, this will inevitably create confusion within the community. Therefore, future planning for the formation of laws and regulations must be precise, as it is also related to effectiveness. Furthermore, in the repressive aspect, the use of the *omnibus law* method must be accompanied by legal reasoning and necessity. Efforts to review legal effectiveness from the perspective of legal philosophy do not have to be understood by directly applying the *Ignorantia juris non excusat* postulate, assuming that everyone knows and understands the law.

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