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Legislative Analysis

1. Title of the document: Decree No. (9) on the legislation process of the legislative documents

2. Introduction:

a. Basis of the Document

This legislative document was enacted under Decree No. 9, dated October 24, 2022 (1444/3/28), by the Supreme Leader of the De Facto Authorities (DFA) and was published in the Official Gazette (1432).

b. Summary Of the Document

This decree was first published in the official gazette number (1424) dated November 5, 2022 (1401/8/14). Then, after a series of amendments, it was published for the second time in the official gazette number (1432) dated May 22, 2023 (1444/11/2 – 1402/3/1). This decree explains how to prepare and process legislative documents in the DFA system within five articles.

c. Scope of the Document

Since this document regulates the legislation process of the legislative documents from the approval to the publication stages and explains its details, the scope of implementation shall be all DFA ministries and entities.

d. Responsible Authorities

All Emirati ministries and authorities are primarily responsible for implementing this document. Each authority within the DFA is tasked with preparing the initial draft of the legislative document in accordance with this directive. However, the paramount responsibility lies with the Independent Review Commission of the Ministry of Justice.

3. Description And Analysis

a. Changes This Document May Bring and Ambiguous Points in This Document

According to this five-article decree, the relevant authority prepares the initial draft of a legislative document in the DFA system. This authority is obligated to establish a

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committee composed of religious scholars, experts, and experienced professionals in the relevant field. When a legislative document pertains to multiple authorities, a joint committee with representatives from each authority is formed; this committee is chaired by the authority with the most responsibility for implementation. The committee must consult Hanafi jurisprudential sources if the legislation includes Sharia aspects.

After drafting, the legislative document is sent to the Ministry of Justice for verification and scrutiny by religious scholars and legislative professionals. The Ministry then sends the revised document to an independent commission for final review, which is tasked with making any necessary further revisions. This Independent Final Review Commission is the final authority for review and correction. After its review, the Commission submits the document to the Supreme Leader of the DFA for endorsement. Endorsed legislative documents are sent to the Ministry of Justice for publication in the official gazette. Therefore, legislative documents in the DFA system must pass through five stages before they are enforceable: drafting, verification, final revision, endorsement, and publication in the official gazette.

In the republican system, the authority to draft the law was not only the executive branch, but each of the three executive, judicial, and legislative branches of the government could start the legislation process by drafting and preparing the law draft. According to Article 95 of the Constitution of the Republic era, there were two types of legislative drafts: the Government Bill and the Representatives' Bill. The legislative draft prepared by the executive or judicial branch was called the government bill, and its processing took a relatively long time. The legislative draft, prepared by the members of the National Assembly or the legislative branch, was called the Representative's Bill and had a relatively specific and different process than the government bill. The authorities that drafted the law in the legal system of the republican era were the government (executive and judicial branches) and the National Assembly (legislative branch). The competence of the government in drafting the law has been stated in the ninety-fifth article of the 2004 constitution as follows: "To regulate the judicial affairs, the government can propose legislation proposals on its behalf or behalf of the Supreme Court."

The legislation process of law, especially during the republican period, goes through six stages: the drafting stage, carried out by the relevant authority; the review stage, done by the Ministry of Justice; the approval stage, carried out by the Council of Ministers, the approval stage by the National Assembly, the endorsement stage by the President and finally the publication stage in the official gazette by the Ministry of Justice. These steps are briefly mentioned in Article (7) of the Law on Procedures for Publication and Enforcement of Legislative Documents published in the Official Gazette No. (1246). The relevant entity drafted the law. But, if the law was related to

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several authorities, a commission composed of members of the same authorities was created and was preparing the draft of the law. If the law was not related to one authority or several authorities but had a general nature, in this case, the President of the Council of Ministers could appoint a competent commission to prepare the draft of a law with a general nature and more importance. Also, the Institute of the Ministry of Justice could prepare, verify, and present a legislative document for the legislation process.¹

The ambiguous point is that the decree does not mention who should prepare the draft of a legislative document if it is of a general nature. It has only mentioned that the relevant authority should prepare the initial draft of the legislative document. It has also mentioned that when the implementation of a legislative document is related to several entities, a committee consisting of religious scholars, professional employees with experience in the relevant field, and experts from each entity will be created and appointed to prepare the initial draft of the legislative document based on the joint decision of the relevant departments. However, the authority to approve a legislative document of a general nature has not been specified in this decree.

The legislation process of a legislative document in the DFA system, as mentioned earlier, is of five stages: the drafting stage is carried out by the relevant authority, the verification stage by the Ministry of Justice, the final review stage by an independent commission that is established for this purpose, and the endorsement stage by the supreme leader of the DFA and publication stage in the official gazette by the Ministry of Justice. It is to be noted that the cabinet in the DFA system has been left aside in the legislative process, and its role has been completely ignored. However, in the republican system, the legislative document was sent to the cabinet for approval, and it was evaluated as a whole in terms of form, content, and technical issues by the Legislation Committee of the cabinet. Then, the cabinet, after the overall evaluation of the legislative document in terms of form and content, would approve it according to the circumstances. Another difference that is worth mentioning in the republic is that not only was legislative competence given to the community representatives, but it was also emphasized to give the right of participation to civil society organizations, the private sector, and other natural or legal persons in the process of the law legislation, approval, and finalization. Civil society organizations, the private sector, and community representatives have the right to include their opinions in the legislative documents during their approval by the relevant authority or before approval in the National Assembly. However, in the current system, all legislative documents are processed and approved without consulting civil society organizations or community representatives.

¹ Refer to Article 17 of the Law on Procedures for Publication and Enforcement of Legislative Documents, published in the Official Gazette No. (1246).

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b. The Compliance or Non-Compliance Of This Document With Other Similar DFA And International Law Documents

Although another legislative document with the same content has not yet been prepared in the current system that raises the issue of compliance with this document, a legislative document by the name of " Law on Procedures for Publication and Enforcement of Legislative Documents" was in force during the republican period, and was published in the official gazette number (1246) which, considering the nature of the system, is very different from this legislative document and is not in force at the moment.

4. Potential Impacts

a. Positive Potential Impacts

Although the legislative process and the stages of preparing legislative documents, from the approval stage to the enforcement stage, were unknown, a clear framework was not defined for the legislative process. The situation was ambiguous in the DFA system before this document. Still, all the DFA entities were informed on how to process a legislative document and speed up the work process and activities after the approval of this document.

b. Negative Potential Impacts

Since this document is intended for all DFA entities, I do not know of any possible negative effects on the audience regarding the content of this legislative document describing the legislative process.

5. Problems

a. What Problems Will Be Created by Implementing This Document?

It is stated in paragraph (1) of the third article of this decree that an independent commission will be established for the final revision of the legislative document. This commission has an obligation to carefully review the final draft of the legislative document that the Ministry of Justice sent and make all the necessary corrections in a legislative document. This commission has been introduced as the final authority for reviewing and correcting legislative documents. After the final review, the commission sends the legislative document to the leadership of the DFA for endorsement. The word "independent" in the suffix of the commission may be interpreted as being independent from the government. In this case, the commission is directly controlled by the leadership of the DFA and reports to him, and he appoints its members. This shows the dominance and control of the supreme leader of the DFA over the legislative

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process. In fact, the separation of powers in this modern era is not concerned with this system, and all powers, including the legislative power, are under the control of the leadership of the DFA. Today, people's participation and involvement in the legislative process are usually manifested in two general ways: directly, through referendums and direct reference to people's votes, and indirectly, through the parliament or legislative assemblies consisting of community representatives; the second one has been assumed to be the main way. Anyway, this important and basic question is raised in the above framework: what is the role of the community in the mentioned legislative system, and how can they participate in it?

b. Proposed Ways to Resolve or Mitigate These Problems

Efforts must be undertaken to facilitate community participation in the development of laws and policy-making by establishing community-based mechanisms that ensure the system's stability and continuity in the present era.

To forge a stable, robust, transparent, and responsive system, a community-oriented structure and framework are essential. Within this framework, public participation and the equal rights of citizens must be upheld to prevent inequality, violence, injustice, insecurity, and instability.