

Research Paper

Legal Politics of Legislation of Regional Regulations in Indonesia

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Abstract: Regional regulations are written regulations containing generally binding legal norms established by the Regional People's Representative Council with the joint approval of the Regional Head. The regional legislation program has an important and strategic position in the formation of regional regulations. However, most local regulations actually get rejection from the community until they are revoked by the government. The method used in this research is normative legal research. The process of making local regulations rarely involves the community so that local regulations that are born are often not accepted by the community. The Regional Government and the Regional People's Legislative Assembly should first prepare a regional legislation program to determine the needs of the region and the needs of the community, then make regional regulations that are in accordance with the Regional Medium-Term Development Plan or Regional Strategic Plan. Therefore, there must be political will from the Regional Government and the Regional House of Representatives to establish cooperation with universities in conducting studies on a problem so that it becomes an academic text that is ready to be ratified into a regional regulation.

Keywords: Legal Politics, Legislation, Regional Regulations.



1. Introduction

Legislation which is interpreted as a process of law formation can not only be seen in terms of formal procedures as contained in laws and regulations, which only regulates an activity or process in the formation of laws and regulations carried out by authorized institutions, as is the case in the formation of laws and regulations regional regulations carried out by the Regional Government and the Regional People's Representative Council at the provincial and district/city levels.

In this case, the laws and regulations governing the formation of regional regulations are summarized in Law Number 23 of 2014 concerning Regional Government, Law Number 12 of 2011 concerning the Establishment of Legislation, Government Regulation Number 16 of 2010 concerning Guidelines for Preparation Regulation of the Regional House of Representatives concerning the Rules of the Regional House of Representatives, and Regulation of the Minister of Home Affairs Number 53 of 2011 concerning the Establishment of Regional Legal Products. All of these regulations further strengthen formal juridical technicalities in the formation of regional regulations which are institutionally given authority to the Regional Government and the Regional House of Representatives at the provincial and district/city levels.

The legislative process of regional regulations also has a sociopolitical side in the form of struggles and interactions of social forces and political forces that surround and are around them [1], namely the components of political infrastructure in the atmosphere of people's lives that have influence in the legislative process of regional regulations, such as how the attitudes of political parties, interest groups, news through the mass media, and public participation regarding local regulatory legislation policies.

Therefore, it is imperative in a democratic country, legal politics of legislation leads to the opening of opportunities for the people to participate in determining legislative policies. Participation here can be interpreted as participating and participating in an activity, starting from planning to evaluation [2].

The opportunity for the public to participate in the legislative process has actually been accommodated since Law Number 32 of 2004 concerning Regional Government, which is regulated in Article 139 paragraph 1. Then a new Regional Government Law emerged, namely Law Number 23 of 2014 concerning Government Regions, which are regulated in Article 237 and Article 253. Article 237 paragraph (3) of Law Number 23 of 2014 concerning Regional Government states that the public has the right to provide input orally and/or in writing in the formation of regional regulations.

Article 253 paragraph (1) of Law Number 23 of 2014 concerning Regional Government states that the Regional House of Representatives and Regional Heads are obliged to disseminate since the preparation of the program for the formation of regional regulations, the preparation of draft regional regulations, and discussion of the draft regional regulations. Then, Article 253 paragraph (5) of Law Number 23 of 2014 concerning Regional Government states that the dissemination as referred to above is carried out to provide information and/or obtain input from the public and stakeholders.

In Law Number 12 of 2011 concerning the Establishment of Legislations, Article 96 is regulated. Based on Article 96 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislations, it is stated that the public has the right to provide input verbally and/or or written in the formation of laws and regulations. Then, Article 96 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislation states that verbal and/or written input can be made through public hearings, working visits, socialization and seminars, workshops, and/or discussion.

In fact, the principle of openness is one of the principles in forming good laws and regulations. The principle of openness as the principle for the formation of laws and regulations has been stipulated in Law Number 12 of 2011 concerning the Formation of Legislations, namely Article 5 letter g, which contains the intention that in the formation of laws and regulations, starting from planning, drafting, discussion, ratification or determination, and promulgation are transparent and open. Thus, all levels of society have the widest opportunity to provide input in the formation of legislation.

However, based on the author's observations, the legislative process of local regulations often ignores the principle of openness. The social and political dimensions in the form of community participation in the formation of regional regulations are just lip service. The formation of regional regulations tends to be understood by the authorities (Local Government and Regional House of Representatives) as a mere formal juridical authority, ignoring community involvement. As a result, the substance of regional regulations does not contain material content that is aspirational and responsive to the needs and legal developments of local communities. The actions taken by local government officials and the Regional House of Representatives are often also in proposing regional

regulations that are more pragmatic in nature, namely imitating regional regulations from other regions, not their own work.

Therefore, in designing regional regulations, in order to produce regional regulations that are aspirational and responsive in the dynamics of community development in the region and the fulfillment of the juridical and sociopolitical dimensions as mentioned above, in the preparation of regional regulations as one of the legal instruments written on regional policies, The position of the regional legislation program is something that is very urgent as one of the important and initial stages in the regional legislation process as a manifestation of the legal development framework in the region.

The regional legislation program has an important and strategic position in the formation of regional regulations. However, there is no political will from the Regional Government and the Regional House of Representatives regarding the importance of promoting synergy in every formation of regional regulations to plan them systematically.

From the background of the problems described above, what is discussed in this study is how the legal politics of local regulations legislation in Indonesia?

2. Research Methodology

Legal research is a scientific activity based on methods, systematics, and certain thoughts that aim to study one or more specific legal phenomena by analyzing them [3]. The method used in this research is normative legal research, using a statutory approach. Normative legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues faced [4]. Sources of data used in this study are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

3. Discussions

The regional autonomy policy is mandated by the 1945 Constitution of the Republic of Indonesia after it was amended. Since the reform era, the Government has given broad authority to the Regional Government and the Regional House of Representatives to manage their regions through regional autonomy. Regional autonomy is the right, authority, and obligation of an autonomous region to regulate and manage its own government affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia [5]. The Regional Head and the Regional People's Representative Council as the organizer of government affairs in the region are given the authority by the state to make laws in the form of regional regulations.

The definition of regional regulation is a written regulation containing generally binding legal norms established by the Regional People's Representative Council with the joint approval of the Regional Head. The definition of the regional regulation is contained in Law Number 12 of 2011 concerning the Establishment of Legislation.

Based on Article 136 of Law Number 32 of 2004 concerning Regional Government, it is regulated that:

1. Regional regulations are stipulated by the Regional Head after obtaining joint approval from the Regional People's Representative Council.
2. Regional regulations are established in the context of implementing provincial/district/city regional autonomy and assistance tasks.
3. Regional regulations are further elaboration of higher laws and regulations by taking into account the characteristics of each region.
4. Regional regulations are prohibited from conflicting with the public interest and/or higher laws and regulations.

In terms of material content, regional regulations come from two sources, namely autonomy and co-administration. Autonomous regional regulations are regional regulations based on attribution authority, while regional regulations in the context of co-administration are based on delegation authority [6].

In terms of regional autonomy, the position of regional regulations as one of the legal instruments for regional policies is the basis for expanding the implementation of democracy and realizing the welfare of the people in the region. The granting of broad autonomy to regions is directed at

accelerating the realization of community welfare through service improvement, empowerment, and community participation. Therefore, the implementation of regional autonomy demands and encourages each region to make regional regulations for the smooth movement of the joints of regional development whose ultimate goal is to increase people's welfare, in addition to providing guarantees for the protection of policies taken by the Regional Government and the community as users.

As a result of the misinterpretation of regional autonomy, in practice regional regulations made by regional governments place more emphasis on increasing regional income by charging public services to the community rather than improving the quality of public services to the community [7]. This started in 2000. There has been a boom in regional regulations throughout Indonesia. Regions are busy producing regional regulations to be able to increase Regional Original Income (PAD) through regional regulations governing regional taxes and levies [8].

Perhaps the local government's intention is good, namely in order to accelerate the realization of the welfare of the people who are still underdeveloped in their area. However, what happened later in the field was something that was counterproductive to the original intention of granting regional autonomy. The reason is none other than the occurrence of a high-cost economy due to the excessive will of the Regional Government in collecting Regional Original Revenue. As an illustration, in 2009, there were 3,455 regional regulations governing local taxes and user charges that the government recommended to be canceled and/or revised. This figure represents 36% of the total local regulations governing local taxes and levies in Indonesia. In addition, there were 1,727 draft regional regulations governing local taxes and levies that were rejected, especially regional regulations originating from the transportation sector, industrial sector, trade sector, and agriculture sector [9].

Regional Tax is one of the main sources of Regional Original Revenue in the Regional Revenue and Expenditure Budget, which is used to develop the region and improve people's welfare [10].

The role of the Regional People's Representative Council as a legislative body in the region in practice does not understand the issue of the consistency of regional regulations being discussed and approved with laws and regulations that have a higher hierarchy, do not violate the public interest, or are in harmony with regional regulations in other surrounding areas. . As a result, regional regulations appear that are inconsistent, receive less response from the community, and result in losing their legitimacy by the community. Regarding legal certainty, which is the main standard of law, it also fades because the law must have a credibility that can only be owned if the implementation of the law is able to show a consistent flow and provide legal certainty [11]. On this basis, it is necessary to prepare a legal development plan in the regions. One of the problems of legal development in the regions can be resolved by optimizing the regional legislative program.

In Law Number 12 of 2011 concerning the Formation of Legislations, it is stated that the regional legislation program is an instrument for planning programs for the formation of regional regulations at the provincial level as well as regional regulations in districts/cities that are prepared in a planned, integrated, and systematic manner.

In general, the regional legislation program contains a list of draft regional regulations based on certain methods and parameters that serve as guidelines and controllers in the preparation of regional regulations that are binding on the Regional Government and the Regional People's Representative Council to form regional regulations. The provisions of the regional legislation program in compiling a list of draft regional regulations are based on:

1. Orders of higher laws and regulations.
2. Regional development plans.
3. Implementation of autonomy and assistance tasks.
4. Local community aspirations.

The material regulated in each draft regional regulation has first gone through assessment and alignment as outlined in an academic text. The regional legislation program is set for a period of one year based on the priority scale for the formation of the draft regional regulation before the stipulation of the draft regional regulation regarding the Regional Revenue and Expenditure Budget (APBD). The preparation of the regional legislation program between the Regional Government and the Regional People's Representative Council is coordinated by the Regional People's Representative Council through equipment that specifically handles the field of legislation.

With the regional legislation program, it is hoped that the consistency of regional regulations will be realized and eliminate vertical and horizontal opposition to laws and regulations within the framework of the national legal system. In planning for legal development in the regions, it must also be guided by the legal development plan at the national level which is arranged in the national legislation program.

Furthermore, considerations that can be used as a guide for the need for the preparation of regional legislation programs are as follows:

1. The strategic position of regional regulations as the legitimacy of every regional development policy.
2. In terms of legal politics, it is necessary to draw up various regional regulations needed in the context of implementing regional autonomy based on a priority scale in accordance with legal developments in the region.
3. There is a level of synchronization of regional regulations vertically and horizontally with other laws and regulations.
4. So that regional regulation legislation can be coordinated, directed, and integrated jointly prepared between the Regional Government and the Regional People's Representative Council.
5. So that legal products in the regions remain within the unity of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The targets that can be achieved in the national legislation program that are jointly prepared between the Regional Government and the Regional People's Representative Council within a period of one year at least have objectives, including being a means of controlling activities for the formation of regional regulations and building synergy between the Regional Government and the Regional People's Representative Council in legislation for the formation of regional regulations.

In this regard, there are several factors that also influence the success of the preparation of regional legislation programs. First, the quality and political commitment of the Regional Head and the members of the Regional People's Representative Council as the parties given the authority to form regional regulations. In this case, the quality of the political elite in the regions is determined by the recruitment process within the political party environment. Until now, it is still felt that the recruitment process is more colored by political acceptability factors than the capability to carry out political leadership functions in the regions.

Second, the support of functional officials who draft laws and regulations. In this case, the number of drafters of laws and regulations is still small and a career as a drafter of legislation is not an attractive and promising profession for an employee in government institutions.

Third, experts who master the substance of regional regulations. In this case, it is still rare for experts in the regions to master a particular field of science whose expertise is very specific. Therefore, cooperation between the Regional Government and the Regional People's Representative Council with universities is very important to do.

Finally, human resources in the ranks of the bureaucracy are still very minimal at the regional level so that it becomes something natural if the study of the draft regional regulations is not optimally carried out.

The issue of commitment is an important issue in the preparation of regional legislation programs. Good intentions that have been built by the government to formulate national policies and regional policies at the level of laws and regulations, as regulated in Law Number 10 of 2004 concerning the Establishment of Legislation, which was later updated by replacing it with Law Number 12 The year 2011 concerning the Establishment of Legislation in fact has not met expectations. From the author's experience in the regions, the political will of the Regional Head and members of the Regional House of Representatives to manage good governance in terms of legislation on regional legal products is still low. As a result, the preparation of regional legislation programs has never been well planned. Then, there is an attitude based on the pragmatism of the authorities without involving community participation in the process of drafting regional regulations as mandated by law so that regional regulations often appear that are more oriented to partial needs due to orders or the interests of certain parties.

The weakness encountered in the regions as a result of the original planning of regional legislation programs is that often the regional regulations that are issued are not related to regional development

plans, such as the Regional Medium-Term Development Plan or Regional Strategic Plan. For example, in Riau Province, legal development should begin with the Riau Province Regional Strategic Plan which is a description of the regional situation, namely realizing Riau Province as the center of the Malay economy and culture in Southeast Asia in a religious society that is physically and mentally prosperous, which is carried out using three approaches. , alleviating poverty, tackling underdeveloped human resources, and improving infrastructure. However, the 2012 Riau Province regional legislation program does not reflect the spirit in the Riau Province Regional Strategic Plan.

The next weakness is the lack of coordination between institutions, namely the Regional Government through the Regional Apparatus Work Unit, the legal bureau/department, and the Regional People's Representative Council through the Regional Legislation Board, including the involvement of vertical agencies such as the Ministry of Law and Human Rights.

In addition, the proposals for draft regional regulations by the Regional Government and the Regional People's Representative Council are often without going through in-depth studies, such as the preparation of academic texts. The phenomenon that occurs is that the draft regional regulations are obtained from other regions through comparative studies, followed by the making of academic texts as a formality.

The Regional Government and the Regional People's Representative Council in making regional regulations are unable to capture the aspirations of the community and accommodate the public interest. According to Bagir Manan, one way to capture aspirations from the community is to involve a working team for the preparation of regional regulations, conduct public trials to certain parties, conduct workshops, and publish draft regional regulations in order to get feedback from the community [12]. Therefore, of course, it is not difficult to find various legal products in the form of regional regulations that are less integrated with development fields in the region. In fact, it is not uncommon for several regional regulations to be incompatible with the principles of the formation of laws and regulations as well as the principles of the content of laws and regulations as regulated in Law Number 12 of 2011 concerning the Establishment of Legislations.

The formation of a statutory regulation must be based on the principles of establishing good laws and regulations, which include the principle of clarity of purpose, the principle of proper institutional or official formation, the principle of conformity between types, hierarchies, and content material, the principle of being able to implement, the principle of usability and effectiveness, as well as the principle of clarity of formulation [13].

According to Jimly Asshiddiqie, the factors that influence the process of forming laws and regulations are party system factors and community participation factors [14]. The legislature is the representative of the people who is obliged to fight for the welfare of the people, although at the same time members of the legislature also bring the interests of their respective political parties. Correspondingly, executive officials are also representatives of political parties, although there are some executive officials who come forward from the independent path. In order for the laws and regulations to be produced to reflect the interests of the people to achieve a prosperous state, executive officials and legislative bodies must be able to override the interests of political parties and the interests of their groups for the sake of the people's interests in the process of forming laws and regulations [15].

5. Conclusions

Regional regulations are written regulations containing generally binding legal norms established by the Regional People's Representative Council with the joint approval of the Regional Head. The regional legislation program has an important and strategic position in the formation of regional regulations. However, there is no political will from the Regional Government and the Regional House of Representatives in systematically formulating regulations. In addition, the process of making local regulations rarely involves the community so that local regulations are often not accepted by the community. The Regional Government and the Regional People's Legislative Assembly should first prepare a regional legislation program to determine regional needs, then make regional regulations in accordance with the Regional Medium-Term Development Plan or Regional Strategic Plan. Therefore, it is necessary to have cooperation between the Regional Government and the Regional House of Representatives with universities in making studies of regional regulations to become an academic text.

References

- [1] A. Ibrahim, *Legislation and Democracy*. Malang: In Trans Publishing, 2008.
- [2] Sirajuddin, Fatkhurohman, and Zulkarnain, *Legislative Drafting; Institutionalization of Participatory Methods in the Formation of Legislation*. Malang: Yappika, 2006.
- [3] S. Seokanto. *Introduction to Legal Research*. Jakarta: UI Press, 2007.
- [4] P. M. Marzuki, *Legal Research*. Jakarta: Kencana, 2011.
- [5] S. Sunarno, *Local Government Law in Indonesia*. Jakarta: Sinar Grafika, 2012.
- [6] J. Hamidi, *Law Optics Troubled Regional Regulations*. Jakarta: Prestasi Pustaka, 2011.
- [7] E. Chaidir, *Management of Legal Development in the Regions in an Anthology of Democracy, Human Rights, and the Rule of Law*. Pekanbaru: UIR Press, 2008.
- [8] N. Huda, *Relationship of Supervision of Regional Legal Products between the Government and Regional Government within the Unitary State of the Republic of Indonesia*. Yogyakarta: UII, 2009.
- [9] I. Soebechi, *Judicial Review of Regional Regulations for Regional Taxes and Levies*. Jakarta: Sinar Grafika, 2012.
- [10] B. Kadaryanto, and A. S. Utama, "Law Enforcement on Parking Tax Implementation in Pelalawan Regency," *Ensiklopedia Social Review Journal*, vol. 2, no. 1, 2020.
- [11] B. Kusumohamidjojo, *Fair Order; Problematic Philosophy of Law*. Jakarta: Grasindo, 1999.
- [12] B. Manan, *Welcoming the Dawn of Regional Autonomy*. Yogyakarta: PSH UII, 2001
- [13] A. O. Siagian, and A. S. Utama, "Application of Legal Principles in Making Fair and Participatory Legislations," *Journal of Terapan Informatika Nusantara*, vol. 2, no. 2, 2021.
- [14] J. Asshiddiqie, *Introduction to Indonesian Constitutional Law*. Jakarta: Konstitusi Press, 2006.
- [15] S. Isra, *Shifting Legislative Functions*. Jakarta: Rajawali Pers, 2010.