



Strategic Model for Increasing the Effectiveness of Local Government's Legal Development in the Establishment of Local Regulations Based on Community Needs

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Abstract. One sector that has escaped development is a technology that rises to various activities in the virtual world, both private and public interests, such as e-commerce, e-government, and e-court. These changes introduced new concepts, such as e-signature, e-payment, and e-litigation. It is necessary to produce advanced technological changes with the developed legislation. The phenomenon certainly affects the law both directly and indirectly. This research presents the grand design for legal reform in local government, especially legislation based on community needs. A clear and comprehensive great invention in the context of legal development in local government becomes a guideline for all stakeholders. This study uses a normative legal research method, with a legal approach and a comparative approach. The results show that in law reform, especially regional regulations based on community needs, it is necessary to form an annual master plan.

Keywords: local government · legislation · community needs

1 Introduction

Indonesia is a *rechtstaat* [1], not a state based on sheer power (*machstaat*) [2]. In its development, local governments have continuously evolved independently [3] to the actions and demands of the times to make themselves change and develop well. This development occurs because of the local government's ability to adapt to the various sector's changes.

One sector that does not escape development is technology, resulting in various activities in the virtual world, both private and public interests, such as e-commerce [4], e-government [5], and e-court [6]. The regulation of these electronic activities brings new legal concepts, such as e-signature [7], e-payment [8], and e-litigation [9]. During the Covid-19 pandemic, the "latest" thing is that a relationship between subjects is "forced" to be done through an interface. The parties do not meet physically but through online facilities. The bureaucracy uses even some other things.

Bureaucratic reform is a response to technological developments and community needs. Bureaucratic reform should be followed to create improvements in good governance. Good governance is a prerequisite for advanced regional development [10]. The quality of governance will significantly affect the implementation of regional development programs. The better the governance of a region, the faster the wheels of regional development will turn.

To keep pace with changes and technological sophistication, that needs to be balanced with the renewal of legislation. Legislation is a written regulation that contains legally binding norms in general and is established or determined by an authorized institution through procedures set by law. Every statutory regulation can be said to be good legislation, the legal validity and effectiveness if it can be accepted by the community reasonably and valid for an extended time.

Based on this description, this article will elaborate on a strategies model for increasing the effectiveness for forming local regulations based on community needs.

2 Literature Review

A. *Local Government*

The word decentralization comes from Latin: “de” means free, and “centrum” means center. So that decentralization is detaching from the center [11]. Meanwhile, according to the Great Dictionary of the Indonesian Language, decentralization is a government system that gives more power to local governments, handing over part of the leadership authority to subordinates or the center to branches. The World Bank’s Glossary defines decentralization as a “transfer of responsibility, power, and accountability for specific or board management functions to lower levels within an organization, system, or program. In this context, decentralization is defined as transferring responsibility, authority, and accountability regarding management functions to lower levels in an organization, system, or program [12].

According to Henry Maddick, “decentralization is a legal transfer of power to carry out specific and residual functions that are the authority of local governments” [13]. In the literature of the United States, Harold F. Alderfer reveals two general principles in distinguishing how the central government allocates power downwards. First, deconcentration, which merely infiltrates administrative units, either singly or in a hierarchy, separately or in combination with orders about what they should do or how to do it. The second is decentralization, where local units are assigned certain powers over specific tasks. They can exercise their judgment, initiative, and governance [14].

Harold’s opinion was further developed by Rondinelli and colleagues, who defined decentralization as covering any transfer of authority from the central government to local governments or central government officials assigned to the regions [15].

Decentralization has the ideal goal of fostering democratization in the management of power and an effort to develop a better public service system. As an effort to democratize, decentralization is associated with patterns of political devolution, which provides more excellent space for local communities to be involved in determining public affairs and mechanisms in local democratic procedures [16].

According to The Liang Gie, several reasons for the adoption of decentralization are as follows [17]:

- From a political point of view, as a power game, decentralization is intended to prevent the accumulation of power on one side, which can eventually lead to tyranny.
- In the political field, implementing decentralization is considered an act of democracy to attract the people to participate in government and to train themselves in using democratic rights.
- From the technical point of view of government organization, the reason for holding local government (decentralization) is solely to achieve an efficient government. What is considered more important to be managed by the local government, the management is left to the regions. The central government still handles matters that are more appropriate in the hands of the central government.
- From a cultural point of view, decentralization needs to be carried out so that attention can be fully paid to the specifics of an area, such as geography, population conditions, economic activities, cultural characteristics or historical background.
- From the point of view of the importance of economic development, decentralization is needed because local governments can do more and directly assist the development.

Besides advantages, decentralization also contains weaknesses, as in the opinion of Josef Riwu Kaho, as follows [18]:

- Due to the large size of government organs, the government structure becomes complex, making coordination tricky.
- The balance and harmony between various interests and regions can be more easily disturbed.
- Especially regarding territorial decentralization, which can encourage the emergence of regionalism or provincialism.
- Implementing decentralization costs more, and it is not easy to achieve uniformity and simplicity.

B. *Regional Regulation*

Regional regulations are one type of legislation and are part of the national legal system based on Pancasila. At this time, Regional Regulations have a very strategic position because they are given a clear constitutional basis as stipulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia [19].

“Material for the content of Provincial Regulations and regency/city regional regulations contains content material in the context of implementing regional autonomy and co-administration tasks as well as accommodating special regional conditions and further elaborating higher legislation” [20].

Regional regulations have various functions, namely [21]:

- As a policy instrument to implement regional autonomy and assistance tasks as mandated in the 1945 Constitution of the Republic of Indonesia and the Law on Regional Government.

- As implementing regulations of higher legislation.
- In this function, Regional Regulations are subject to the hierarchical provisions of the Laws and Regulations. Thus, regional regulations must not conflict with higher legislation
- as a container of the region's specificity and diversity, a channel for the regional people's aspirations. However, in the arrangement, it remains corridors of the Unitary State of the Republic of Indonesia, based on the Pancasila and Indonesia constitution.
- As a development tool in improving regional welfare.

C. *Principles of Establishing Norm*

In the beginning, the law included solely social relations and balances, which had a fundamental meaning for group cohesion and integrity; unlawful acts [22]. The links between members of groups, groups and general powers that contain rights and obligations need to be stated in regulations in one way or another to provide justice.

J.L.A Hart argues that law is "justice", which means a permanent will to give everyone what is their right [23]. The justice paradigm is absorbed and further elaborated by Justianus in *Corpus Iuris Civilis*, the basis of Roman civil law [24] states, "Juris praecepta sunt haec: honeste vivere, alterum non laedere" Cuique Tribure Act, which means the basic rule of law is to live with worthy, does not harm others and gives to others what is their share [25].

Immanuel Kant provides an understanding of the principle of universal law, which says that the role of the law is to create justice that is desired by everyone and which becomes justice according to the law [26]. Aquinas asserted in his famous postulate that an unjust law is not a law (*lex iniusta non est lex* – an unjust law is no law) [27]. Law as a human work is applicable as a measure of justice. In the order of ideas, the inevitability of the law is justice, although, in reality, the law's implementation does not perfectly reflect justice.

Law means "certainty", which is an assumption that all laws are a constancy, while legal institutions commit law enforcement. Without legal certainty, it will impact the occurrence of publications in the community. In this case, the law has a role and function to create justice and certainty.

The rule of law flows to one main principle: respecting and recognizing human dignity. As a state of law, all government actions must be based on a legal basis established by the people's representative institutions and the government. The principle binds drafting regulations.

Satjipto Rahardjo presupposes the principle as the "heart of the law", where all laws and regulations must be returned as principles because the material of legislation departs from the principles that compose it as a legal ratio. Paton revealed that the principle of law is a means that makes the law live, grow and develop because the principle contains values and ethics. The principles in a legal regulation are like a bridge that connects the regulation with social ideals and the ethical views of the community that will be governed.

According to Hamid S. Attamimi, conveying that in the formation of laws and regulations, there are at least some guidelines that must be developed to understand the

principles of establishing fair laws and regulations (*algemene beginselen van behorlijke regelgeving*) [28] correctly, including: first, the principles contained in Pancasila as general legal principles for statutory regulations. Second, state principles based on the law as general legal principles for legislation. Third, the principles of governance based on the constitutional system as general principles for legislation. Fourth, the principles for legislation developed by experts [29].

Law Number 12 year 2011 about the Establishment of Legislation, forming Regional Regulations (*Perda*) must be based on the principles of the excellent formation, including:

- The principle of purpose clarity is that every formation of laws and regulations must have a clear goal to be achieved;
- The principle of proper institutional or forming organs is that each type of legislation must be made by the authorised institution/official developing the legislation. The laws and regulations may be cancelled or null and void by law if they are made by an unauthorised institution/official;
- The principle of conformity between the type and content is that in forming laws and regulations, it must pay attention to the suitable content material with the type of legislation.
- The principle that can be implemented is that every formation of legislation must take into account the effectiveness of the legislation, both philosophically, juridically and sociologically.
- The principle of effectiveness and efficiency is that every statutory is made because needed and valuable in regulating the life of society, nation and state.
- The principle of formulation clarity is that every statutory must meet the technical requirements for preparing statutory regulations. The systematics and choice of words or terminology, as well as the legal language, are clear and easy to understand so that it does not cause various interpretations in its implementation.
- The principle of openness is that they are transparent in the regulations forming process, starting from planning, preparation, drafting and discussion. Thus, all levels of society have the widest opportunity to provide input in the statutory drafting process.

3 Methodology

This paper uses a dogmatic legal research method examining secondary data through literature studies to scrutiny primary legal materials in the form of statutory regulations or other legal documents [30]. The statute approach is carried out by reviewing the laws and regulations related to decentralization.

The conceptual approach examines theories and concepts related to local government, decentralization, and laws and regulations. In addition, a contextual system is used related to the applicable law at a particular time [31]. In addition, research results, assessment results, and other references are reviewed.

This paper uses secondary data which is obtained from a literature study. Secondary data is acquired by reading, taking notes, quoting, and reviewing primary, secondary and tertiary legal materials. Primary legal materials are legal materials that have binding legal force, such as the 1945 Constitution, the local government law, and the law

on the established legislation. Secondary legal materials closely relate to primary law, such as court and Constitutional Court decisions. Tertiary legal materials are legal materials that complement primary and secondary legal materials intending to make them more straightforward, for example, dictionaries and supporting literature in writing this research [32].

4 Result and Discussion

A. *The Process of Forming Regional Regulations*

According to Article 1 paragraph (1), Law No. 12 of 2011 about legislation establishment, making laws and regulations include the stages of planning, drafting, discussing, ratifying or stipulating, and enacting. In the formation of regional regulations, several stages must be passed, namely: (1) planning, (2) preparation, (3) discussion, (4) ratification or stipulation, (5) promulgation, and (6) dissemination.

Planning for the regional regulations is carried out with the regional legislation program (Prolegda), currently called a program for forming regional regulations (propemperda). Propemperda contains a program for forming regional regulations with the title of Draft Provincial Regulations or Regency/City Regional Regulations, the materials to be regulated, and their relation to other laws and regulations. The material regulated and its relation to other statutory regulations is a description of the conception of the Draft Regional Regulation, which includes:

- Background and purpose of preparation;
- Goals to be realized;
- The main idea, scope, or object to be managed; and
- Arrangement and direction.

An academic paper is an inseparable part of the preparation of bills because it contains regulatory ideas and material for the content of legislation in certain fields that have been systematically reviewed holistically and futuristically from various aspects of science [33]. According to the Law No. 12 year 2011, Academic Papers are manuscripts of research results or legal studies and other research results on a particular problem that can be scientifically justified regarding the regulation of the problem in bills, provincial, regency/city regional regulation, as a solution to problems and community legal needs.

B. *A Program for Forming Regional Regulations*

Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation (UU 15/2019) Article 1 Number 10 states that the Regional Legislation Program, from now on referred to as Prolegda, is a planning instrument for the establishment of Provincial Regulations or Regency/City Regional Regulations that are prepared in a planned, integrated, and systematic manner.

Propemperda is a list of sequences and priorities for the draft provincial regulations that will be made in one fiscal year. Propemperda is prepared by the DPRD and the

Governor for one year and is determined by a DPRD decision. It can be concluded that the Scope in the Propemperda only contains a list of draft regional regulations, not including the Governor's Regulation.

In implementing regional autonomy, regional governments have the authority and independence to regulate regional affairs—each region carries out government affairs under its authority to make policies. A critical element in the implementation of the process is the establishment of Regional Regulations.

The content of the Regional Regulation contains material for the implementation of regional autonomy and assistance tasks and accommodates special regional conditions and/or further elaboration of higher legislation. The process of forming a regional regulation includes the stages of planning, drafting, discussing, stipulating, and enacting legislation guided by the provisions of the legislation.

Under the provisions of laws and regulations, the planning for the preparation of Regional Regulations is carried out in a Propemperda, which is prepared by the Regional People's Representative Council and the Regional Head for 1 (one) year based on the priority scale for the formation of the Draft Regional Regulation.

Furthermore, Propemperda is determined by a DPRD decision. It is done every year before the stipulation of the draft Perda on the APBD. Law No 9 of 2015 Article 240 states that drafting a Regional Regulation must be carried out based on the Propemperda. Regional regulation can be drafted if first entered into the Propemperda list.

Propemperda and regional regulations are related. This can be seen from their scope. In terms of material, the Propemperda contains a list of regional regulations that will be drafted. A regional regulation can be drafted if it is first entered into the order and priority list of regional regulations determined by a decision of the regional people's assembly council. Except in certain circumstances, the Regional People's Representative Council or Regional Head may submit a draft regional regulation outside the Propemperda (Article 239 paragraph (7) of Law 9 of 2015).

Regional head regulations will have a closer relationship with provincial regulations. This is also a common practice because the content of the governor's laws, more specifically, has the scope of implementing regional regulations. Based on the relationship between regional and head regulations, it can be stated that Propemperda has a relationship with regional head regulations that will be formed in the future. The list of proposed regional rules contained in the regional regulations will describe regional head regulations that must be created as complementary regulations for implementation materials whose materials are not regulated in regional laws.

It can also be stated that the number of regional regulation proposals in Propemperda will have at least the same number of regional head regulations. If one regional law contains an order to form a regional head regulation, the ratio between the number of regional and regional head regulations will be the same. In practice, one regional regulation often contains more than one order for forming a regional head regulation.

Regional head regulations formed to implement regional regulations, as stated in Law 9 year 2015, are delegations of authority given by regional regulations to be further regulated by regional head regulations. Meanwhile, on the power of laws and regulations, the power given by legislation is higher than regional regulations, which give delegates the authority to regulate specific affairs with direct regional head regulations.

Juridically the formation of regional head regulations differs from the formation of regional regulations. If the regional head regulations emphasize the delegation of authority from higher laws and regulations or based on authority, regional regulations based on Article 14 of Law 15 of 2019 can regulate the content material in the context of implementing regional autonomy. Moreover, co-administration tasks accommodate special regional conditions and/or further elaboration of higher legislation.

Regional head and technical regulations can also be formed to fill legal voids for regulations that are needed but have not been stipulated or regulated in regional regulations. Such a legal vacuum can ideally be avoided with a Propemperda, which contains a list of proposed Regional Regulations under the region's legal needs.

C. *Public Test Model on Regional Regulations*

The provisions of Article 96 of Law no. 13 of 2022 concerning the Second Amendment of Law no. 12 of 2011 concerning the Establishment of Legislations mandate that the public has the right to provide input orally/or in writing at each stage of the Formation of Legislations. This feedback is submitted online and offline.

People entitled to submit inputs are individuals or groups who are directly affected and/or have an interest in the content of the draft regional regulations. The form of public consultation activities can be carried out through public hearings, working visits, seminars, workshops, discussions and/or other public consultation activities.

The results of public consultation activities are considered when planning, drafting and discussing draft regional regulations. The designer of regional regulations can explain to the public the community input discussion results.

Practically, community participation in forming regional regulations has not been carried out evenly and optimally. So far, regions, provinces, and regencies/cities have reached out to the people's aspirations through public hearings and examinations held after the academic texts and draft regional regulations have been discussed in the council.

Generally, the community is involved in forming regional regulations at the last stage. The results of the aspirations or inputs of the community will not necessarily be accepted by the makers of the draft regional regulations. So it takes much effort, so local regulations answer the community's needs.

If viewed from the norm's character, the implementation of community participation is still a form of choice as there is the word "can", which means it is not absolutely binding to involve regional participation. As a consequence, the draft regional regulations that are drawn up do not represent the needs and aspirations of the community.

On the other hand, Article 58 of Law no. 13 of 2022 also stipulates the harmonization, unification, and consolidation of the conception of the Draft Provincial Regulation is coordinated by the Minister or the head of the Institution that carries out government affairs in the field of Formation of Legislation. Harmonization, unanimity, and consolidation of the conception of the draft provincial regulations are carried out by vertical agencies of ministries or institutions that carry out government affairs in the field of forming laws and regulations.

Based on these conditions, it is necessary to form a new scheme for community involvement in the process of forming regional regulations. As in Law no. 13 of 2022,

it is stated that the community can provide input at every stage. Therefore, it would be better if the community was involved in the planning stage from the beginning.

The planning stage is the Propemperda stage. If the community is involved in this process, providing input according to conditions and needs will be more optimal. The implementation of providing input at the planning stage is not necessarily accepted or rejected but requires assistance from academics who review all inputs. A team carried out the study with community representatives.

5 Conclusion and Suggestion

As has been demonstrated in this paper, the strategies model for increasing the effectiveness of forming local regulations based on community needs is involving society in the first stage of forming regional regulation.

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