



The Role Of Legislative Drafting Legislation Of The Regional Office Of The Ministry Of Law and Human Rights In The Formation Of Regional Regulations

Rosa Desi Natalisma Manurung^{1*}, Janpatar Simamora²

^{1,2} Fakultas Hukum Universitas HKBP Nommensen Medan

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*Correspondence: Rosa Desi Natalisma Manurung

Email:

rosadesinatalisma.manurung@student.uhn.ac.id

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Abstract: To reduce differences between laws and regulations, the Regional Office of the Ministry of Law and Human Rights must be involved in the creation of regional regulations, both in terms of content and harmonization efforts. The extent to which the role of the Regional Office in the context of harmonization and factors is a research issue. Obstacles and how to build a consistent pattern of cooperation with the regional government sector. The research findings show that the Regional Office has actually participated in harmonization. However, there has been no significant participation in the creation of regional legislative initiatives. This is due to several things, including the problem of sectoral egos of the regional government, lack of infrastructure, and lack of support from the regional office. To ensure that the existence of legislative designers is recognized and considered, the regional office must be able to persuade the regional government directly. Based on the research findings, it can be concluded that the regional office plays an important role in carrying out the function of facilitating the creation of regional legal products, starting with the stages of planning, preparation, and announcement of regional regulations.

Keywords: The Role of Regional Office, Legislative Planners, Duties and Responsibilities, Poitions, Rule Makers

Introduction

In Article 1, paragraph (3) of the 1945 Constitution, the State of Indonesia has been confirmed as a law-abiding country. Naturally, as a state of law, the nation and state must be constantly based on the rules of law that apply. In organizing the constitutional system of the Republic of Indonesia, laws and regulations are included in the National Legal System. Legislation must be made by considering philosophy, jurisprudence, politics, and sociology as well as the principles in existing law, where the science of Legislation is very important to regulate the behavior of life in society, nation and state.

According to Bagir Manan, Legislation is a written positive law that is determined, made or formed by an authorized official or office environment or based on the provisions of certain laws and regulations in a written form containing actions that are generally applicable and binding. There are still many Regional Regulations that are still problematic,

which in Law Number 12 of 2011 concerning the Formation of Legislation has mandated and confirmed that the importance of

Prolegda in the program for the formation of regional legal products contained in a region. However, there are so many problems that are still encountered, namely that there is no awareness of the management apparatus that goes directly to the field, which is due to this negligence, therefore it is very important to harmonize and synchronize in every Local Regulation formation (Pangaeman, Michael A, 2016). Thus, the nation's organizers must be strong, respectable and clean. This is in line with one of the nine priority agendas of Nawa Cita, which states, "Rejecting a weak state by reforming the system and law enforcement that is free of corruption, dignified, and trusted" is one of the nine priority agendas of Nawa Cita.". The establishment of local regulations is the establishment of a new law because the law covers procedural processes, even customary law, behavior, and manners, in carrying out state duties and public services to the community in accordance with the principles of good governance (Ida Ayu Dyah Permata Dewi, Ida Ayu Putu Widiati, Ketut Sukadana, 2020). The entire process and stages of making new law, including the formation of laws and regulations that cover all processes related to public services, are the responsibility of the state to act in a way that is in accordance with the principles of governance (Van der Vlies. I.V, 2005). Laws and regulations are intended to relate to the types of regulations mentioned in Article Paragraph 1 of Law Number 12/2011, which include various laws such as the Constitution, Decrees of the People's Consultative Assembly, Government Regulations/Government Regulations in Lieu of Laws (Perpu), Government Regulations, Presidential Regulations, Provincial, Regency, and City Regional Regulations.

In this regard, the Ministry of Law and Human Rights plays a significant role in regulating and synchronizing laws and regulations as well as the legal advisor of draft local regulations. The Regional Offices of the Ministry of Law are basically responsible for and carry out the duties of the minister. The Ministry of Law and Human Rights is one of the ministries implementing government duties (bestuurer) formed to assist the executive duties of the president, both as head of state and head of government, in terms of issues of implementing responsibilities in the development of the country's legal system (Kementerian Hukum dan Hak Asasi Manusia RI, 2011). Enforcing the law, carrying out legal functions, building a legal culture, and creating laws that are fair, consistent, and non-discriminatory, and not gender biased are strategic tasks or obligations of the state (Suhariyono, 2007). Harmony and synchronization of laws and regulations that apply throughout the country must be considered when building a national legal system. As an extension of the Ministry of Law and Human Rights, the Regional Office (Kanwil) is responsible for legal guidance and coordination and drafting regional laws and regulations in accordance with time. Basically, the duties and functions of the Regional Office are to logically carry out the minister's duties in the regions. If there is a failure to create a good system of legislation, it will result in the opposite condition, namely legislation becomes a major obstacle in the implementation of development. This condition is currently happening in Indonesia (Anggita Yudanti, Wicipto Setiadi, 2022). Problems related to the legislative system often become obstacles in various aspects of state and social system interaction. Therefore, the Regional Office must prepare thoroughly and have high-quality

legal staff to carry out the tasks assigned to it. The Regional Office of the Ministry of Law and Human Rights is responsible for the development of law and legislation in a region whether laws or legal guidelines are implemented successfully or unsuccessfully in a particular area. Therefore, it is necessary to conduct research with the aim of knowing and understanding the participation of legislative drafters in forming or in the formation of regional regulations.

Methodology

This research uses descriptive legal research methods. That is where legal research is carried out by looking at the implementation of laws and legal facts relating to the participation of legislative drafters in forming local regulations in the community carried out by the Ministry of Law and Human Rights. The legal sources used include information obtained from research and literature (library research). The technique of using data is done by focusing on books, physical and electronic documents/records, and laws and regulations (M Iqbal Hasan, 2022).

Result and Discussion

Civil servants of the Ministry of Law and Human Rights who have the authority and power to make and design laws and regulations and bear legal responsibility for their responsibilities in making new laws and regulations are called legislative drafters, which is based on the Decree of the Minister of Administrative Reform Number 41/KEP/M.PAN/12/2000 Article 1 paragraph 1 concerning functional legislative drafters. The relationship between the central and regional governments must, of course, still be seen as a decentralized relationship that continues to prioritize aspects of security as well as integrity within the framework of the Unitary State of the Republic of Indonesia (NKRI). Indonesia is a state of law, which, according to the theory of a state of law, means all government powers are based on law. Where people cannot act on their own without following existing legal rules. Which is where the principle of the rule of law, or what is called the rule of law, means that in managing and administering the state, the actions of the authorities must be based on the law rather than their own strength, desires, or personal interests.

This is done in order to protect the interests of its people and fulfill human rights from arbitrary actions. In Indonesia's approach as a state of law, local regulations, which are a type of legislation, in the P3 Law are defined as laws and regulations formed by the Regional People's Representative Council (DPRD) with the joint approval of the Regional Head (governor) (Indah Pratiwi, Yukiandri, Dian Bhakti Setiawan, 2024). The harmonization of various laws and regulations, including local regulations and sub-decrees, is carried out with the aim that these regulations do not conflict with each other or conflict with the nature of the rule of law. Therefore, not all state affairs are handed over to the Regional Government (Pemda), but they remain the authority of the Central Government by placing its vertical agencies in the regions, especially those concerning the joints of state life, which are fundamental in nature. This is as confirmed in Article 9 paragraph (3) of Law No. 39/2008 on the Ministry of State that: "the ministries that handle religious, legal,

financial and religious affairs have elements of implementing the main tasks in the regions. One of the affairs referred to is legal affairs which is the authority of the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham) “.

The Ministry of Law and Human Rights is one of the ministries implementing government duties (bestuurer) established to assist the duties of the President (executive), both as head of state and head of government, in matters concerning the implementation of tasks in the field of national legal system development (Jurnal Legislasi, 2004). Article 3 (three) of Law Number 12/2011 concerning the Formation of Legislation (UUP3) (Undang-Undang Nomor 12 Tahun 2001 Tentang Pembentukan Perundang-Undangan) establishes the role of the Regional Office of the Ministry of Law and Human Rights in carrying out the function of facilitating the drafting of regional legal products. First, Article 36 paragraph (3) states that: The preparation of Provincial Prolegda within the Provincial Government is supervised by the legal bureau and may involve related vertical agencies. Secondly, Article 58 Paragraph (2), Thirdly, Article 98 Paragraph (1) states that the Designer of Laws and Regulations must be involved in every stage of the formation of Laws and Regulations, and Paragraph (2) states that the Government Regulation regulates the conditions mentioned in Paragraph (1) regarding the involvement and guidance of the Designer of Laws and Regulations (Taufik H Simatupang, 2017).

Article 5 paragraph (2) of Government Regulation (PP) Number 59 Year 2015 on the Participation of Legislation Drafters in the Formation of Legislation and its Development states that: “The participation of designers in the formation of laws and regulations is carried out in the stages of planning, drafting, and discussion”. The same thing also applies to Government Regulation No. 59 Year 2015 which, according to Article 5 of Law No. 12 Year 2011, is related to material and formal principles. The principles are derived from various principles developed by experts in the science of legislation, namely by adapting the nature and characteristics of the Indonesian state (Fauzi Iswahyudi, 2016). Actually, in harmonizing laws and regulations there are two types, namely: vertical and horizontal harmonization. In this vertical harmonization where the legislator is required to compile the law to be in harmony with the articles contained in the higher law, which will be the article on which the law is formed. And in horizontal harmonization, the legislator must also pay attention to harmonization between each other. Namely against legal regulations that are arranged in the same or comparable hierarchical structure. Which is where the principle of *lex posteriori derogate legipriori* is very attached and related to vertical harmonization (Dwiatmoko Anang and Nursadi Harsonto, 2022).

Therefore, the harmonization process is the best way to create effective and efficient local regulations. Harmonization is an effort to harmonize, adjust, strengthen, and round out the concept of a draft law with other laws, both higher, equal, and lower. The purpose of harmonizing this legislation is to harmonize with aspects of Pancasila, and other laws and regulations (Nuryanti Widyastuti, 2016). So that it can produce an agreement on the substance that is regulated. And drafters must also ensure that every regional legal product they form is harmonized with higher regulations.

Local regulations can be canceled through a legal review process, which according to Article 250 of Law Number 23 of 2014 concerning Local Government, where local regulations can be canceled if they are contrary to higher laws and regulations, contrary to public interests, or contrary to decency. However, what is meant by contrary to the public interest is when:

1. Community harmony is disrupted;
2. Access to public services is disrupted;
3. Peace and order is disrupted;
4. Economic activities aimed at improving the welfare of the community are disrupted: and
5. Discrimination against ethnicity, religion, belief, race, intergroup, and gender is disrupted.

Every stage of drafting a draft local regulation, especially during the planning stage, must involve the role of the Regional Office Drafters mentioned in UUP3. The core Raperda is a planned activity taken from the Regional Development Program (Propemda) and “translated” into the Regional Regulation Formation Program (Propemperda). According to Law No. 32/2004 on Local Government, local regulations may not include the following matters that are the responsibility of the central government:

1. International politics or what is called foreign policy
2. Defense;
3. Security;
4. Judiciary;
5. Finance and national finance; and final;
6. Religion (Muhammad T, 2014).

Legislative drafting is very important and necessary to overcome and avoid various common problems that occur in laws and regulations. However, the public does not understand the purpose of the need and necessity of legislative drafting, which makes different opinions and views more difficult to implement (Muhammad F, 2006). Regional legislative drafters are an important field and part of national legal development, and they must be able to design and formulate good and appropriate laws and regulations. Provincial regulations are made by members of the regional representative council and approved by the governor. Regency or city regulations are made by members of the regional people's representative council and approved by the regent (Kansil C.S.T, 1986) To implement regional autonomy, the regional people's representative councils and regents/city regents enact regional regulations, according to Article 1 Figures 7 and 8 (Widjaja, H, 2013). During the process of formulating laws, members of the Regional Representative Council must be accompanied by expert staff because it is the duty of the legislature. With reference to General Decree No. 36/SEKJEN/2001, which regulates the establishment of staff or support organizations to assist in developing draft legislation and other instruments.

In the process of drafting legislation, it is important to consider whether the regulations made have a positive or negative impact on the general public. In general, the role of the drafter is as follows:

1. Developing and designing alternative regulations in overcoming problems in the region
2. Declare the substance based on principles consistently and also clearly:
3. Declare the substance in a consistent and clear way so that it does not become ambiguous:
4. Ensure that any regulations drafted are in accordance with the law.
5. Provide assurance that each regulation designed can solve or overcome regional problems (Kurnia, M. P, Purwanto, Kuspraningrum, E, & Lisi, I. Z. 2007).

In addition to the role of duties, the drafter has responsibilities, which are as follows:

1. Understand the Indonesian constitutional system
2. Understand domestic politics;
3. Understand and master the law and legislation;
4. Be alert and understand well how to design and form regional legal products;
5. Understand the principles of norms and principles contained in the content material;

Examples of Ranperda that have been designed by the Designer of the Regional Office of Law and Human Rights are:

1. Draft Regional Regulation of the City of Binjai Year 2017 concerning Regional Development Based on Competitiveness Through Innovation and Competence
2. Mayor Regulation of the City of Binjai Regarding the Implementation of Regional Innovation
3. Draft Regional Regulation of the City of Binjai Regarding Zakat Management
4. Draft Regional Regulation of the City of Binjai Regarding Respect,

These are some of the draft Local Regulations that have been designed and proposed by the Drafters of the Ministry of Law and Human Rights of Medan City. So where in the drafting of Local Regulations that have been carried out by the Drafters by looking at the Preamble of the Local Regulation which simply contains a consideration containing a concise description of the need to implement the provisions of the article or several articles of the Law or Government Regulation that orders the establishment of the Local Regulation by pointing to the article or several articles of the Law or Government Regulation that orders its establishment. So the regulation must not contradict the regulations that are above it or higher.

After the harmonization process is complete, the draft regulation will be sent back to the DPRD for discussion and approval. This harmonization is required before the draft can be passed into a Regional Regulation. Obstacles in Implementation: The implementation of harmonization at the local level often faces various problems. These include differences in understanding of the substance of regulations between the regional legislature and the Ministry of Law and Human Rights as well as limited human resources within the Regional Office to handle the harmonization process (Susilo T, 2019).

From the data obtained above, it can be seen that it is possible that the ability to build coordination relationships between agencies is influenced by how good information and communication and human relations are. However, creating a pattern of interaction that can be established through communication is not as easy as talking or saying it. In addition, the issues being addressed are sensitive and affect various aspects of people's lives in a region

or area. It is not uncommon for different social, economic and political interests to correlate, and it is not uncommon for regional legal products (Perda) to relate to the social, economic and political interests of different sections of society. But the Regional Office Drafters should be considered as a neutral group of professionals who consider the Perda as a technically correct legal product (harmonious/synchronized both horizontally and vertically) and fulfill the principles of the law, including correct substantive regulations. Therefore, in order for the Designer to be seen and involved, the Regional Office must be able to convince the Provincial Government, Regency/City, SKPD, and DPRD through face-to-face communication. Face-to-face communication must be followed by the drafting capability.

Conclusion

In carrying out the facilitation function of drafting regional legal products, the role of the Regional Office of the Ministry of Law and Human Rights as a Designer of Legislation is very important, starting from planning, preparation, discussion, ratification, stipulation, and enactment of regional regulations. Local regulations are basically planned activities that are derived or "translated" from the Regional Development Program in the field of law. The Local Government Work Organization (SKPD), which is proposed as a Propemperda Program for the Formation of Local Regulations by the Legal Bureau of the Provincial Government Secretariat, begins as an "embryo" of the Local Regulation. At this early stage, the Regional Office Drafters are supposed to be involved. They are involved, but not as much as expected. There are several reasons why the Regional Office Drafters have not been or are not involved by the local government/DPRD. The first is that they have been involved, but they "lack" mastery of the substance.

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