



Formation of Academic Papers of Regional Regulations in the Indonesian Constitutional System

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Abstract

Regional regulations (Perda) have a very strategic role in the implementation of regional governance. Various efforts to improve the quality of the Perda continue, including through Law Number 12 of 2011 concerning the Formation of Laws and Regulations which require the preparation of Academic Texts (NA). This study aims to identify and analyze the urgency and implementation of NA drafting in the formation of regional regulations based on legislation. The research method used is normative juridical research, by examining the prevailing norms in the preparation of a guideline in the form of a text with a statutory and historical approach. The results showed that NA has a very important urgency to create a good and quality regional regulation. NA is very important in the process of forming laws and regulations when faced with statutory problems that are considered unresponsive, egalitarian, futuristic, and unqualified. Through NA, each Raperda that gets a scientific touch can produce a higher quality Regional Regulation and can be categorized as good legislation. Given its very vital urgency, it is hoped that the drafters of Perda (Regional Government and DPRD) formulate NA first before compiling the Regional Regulation Draft and provide legal standing for NA compilers in the formation of Perda which need to be regulated in Legislation.

Introduction

Indonesia as one of the countries that is close to the civil law legal system, of course, uses written law or better known as "laws and regulations" as the main instrument. Legislation can be defined as any decision in a written form issued and stipulated by an authorized and publicly binding official (including laws in both formal and material terms).¹

Substantially, statutory regulations will be meaningful if there are goals to be achieved, namely, in addition to providing certainty, they also provide benefit, justice, goodness, comfort and reflect the will of the people.² As the main source of law, laws and regulations are used in the process of governance at the central and regional levels. In the regions, regional regulations (hereinafter referred to as perda) are one of the most important instruments in the implementation of regional autonomy.

Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states "Regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and co-administration". From this provision, each regional government (hereinafter referred to as Pemda), both at the provincial, district / city level in carrying out its duties is given the freedom to form perda. Basically, perda is a legal instrument for the Regional Government in implementing Central Government policies and the policies of the Regional Government itself. Perda functions to carry out regional autonomy, assistance tasks, accommodate special regional conditions and further elaborate the above laws and regulations.³ Perda is one of the tools in carrying out social and democratic transformation. In addition, it is hoped that local regulations will be the main driving force for the fundamental changes needed by the regions. Judging from its function, regional regulations have an important function to create welfare in the regions. If the entire region is prosperous, it can be ascertained that the ideals and goals of the Indonesian state as a whole will be achieved automatically as well.

The existence of regional regulations (Perda) in the context of regional governance is very urgent and strategic. It is said so because Perda is a legal instrument that is absolutely necessary for the implementation of regional government. In the operational motion, regional government activities are carried out through Perda. Therefore, regional regulations are also strategic in achieving the goals of regional autonomy. Perda can only

¹ See Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Bandung: Alumni, 1997, p. 248

² See Faisal Amrullah, "Kebijakan Umum dalam Politik Perundang-Undangan di Indonesia", *Jurnal Hukum*, Volume VIII Nomor 2 Edisi Juni, 2010, p. 26-30.

³ See I Gde Pantja Astawa dan Suprin Na'a, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, Bandung: Alumni, 2008, p. 69.

carry out its strategic function as mentioned above if it is of good quality. Various efforts to improve the quality of the Perda have been carried out for a long time, one of which is that since 2011 through Law Number 12 of 2011 concerning the Formation of Laws and Regulations requires the preparation of Academic Texts (hereinafter referred to as NA) in the formation of Perda. NA is very important in the process of forming statutory regulations when faced with the problems of laws and regulations so far which are always considered unresponsive, not egalitarian, not futuristic and generally not of high quality.⁴ The solution to this problem is to do scientific research. Through NA, each Raperda gets a scientific touch whose output can produce a higher quality regional regulation and can be categorized as good legislation.⁵

The problem with the number of problematic Regional Regulations in the midst of the presence of NA in almost every regional regulation formation certainly raises several substantial questions about the existence of NA as an effort to produce quality Regional Regulations, namely: how is the implementation of NA drafting in the formation of regional regulations in Indonesia and how ideally the existence of NA is able to produce quality Regional Regulations?

Research methods

This research is a normative legal research with a focus on examining and examining various literatures regarding the juridical study of the preparation of academic texts for regional regulations and the implementation of academic texts in the formation of regional regulations in Indonesia. With the object of reviewing the prevailing norms in the preparation of academic texts, and implementation in drafting regional government legislation. Source of data from primary legal materials; secondary legal materials; and tertiary legal materials. Data were collected through library research research methods, using literature (literature), in the form of books, scientific journals, mass media and the internet and through focus group discussions and direct interviews with related parties. With a statutory approach and a historical approach. Furthermore, the data are analyzed descriptively qualitatively.

The two questions above contain practical and theoretical aspects of NA preparation. The answer to the first question is expected to show various problems and factors that influence the preparation of NA to produce a quality regional regulation. Thus, the question has both practical value and benefit. Meanwhile, the answer to the second question is expected to be able to produce a concept or theory in the preparation of NA which is able to produce quality regulations. This can be possible because the concepts or theories that are compiled start from the problems that arise in the practice of preparing NA as answered in the first question.

⁴ *Ibid* p. 109.

⁵ *Ibid*.

This is also in accordance with its development, Academic Manuscripts have received great attention as stated in Law Number 12 Year 2011 (hereinafter abbreviated as UU PPP). In this PPP Law, normatively the Academic Text has a strong legal position. Likewise, what is emphasized in one of the articles confirms that "Draft laws originating from the DPR, President, or DPD must be accompanied by an academic paper". The word "must" for the provisions above, raises the consequence of the obligation to provide or prepare an Academic Paper in formulating the Bill.

In accordance with what was described above. Then the problem can be formulated What is the urgency of an academic paper in the formation of regional regulations based on legislation and how is the implementation of academic drafting in the formation of regional regulations in Indonesia.

The objectives to be achieved with this research are: To find out and analyze the urgency of academic texts in the formation of regional regulations and the implementation of the preparation of academic texts in the formation of regional regulations in Indonesia. Meanwhile, the benefits to be achieved in this paper are that it can be used as an academic study material in order to create an institution that is authorized to form Regional Regulations, has the quality and substance of these laws in society.

Results and Discussion

A. The Urgency of Academic Papers in the Formation of Regional Regulations

Legislation can be defined as any decision in a written form issued and stipulated by an authorized and publicly binding official (including laws in both formal and material terms).⁶ Substantially, statutory regulations will be meaningful if there are goals to be achieved, namely, in addition to providing certainty, they also provide benefit, justice, goodness, comfort and reflect the will of the people.⁷ As the main source of law, laws and regulations are used in the process of governance at the central and regional levels. In the regions, regional regulations (hereinafter referred to as perda) are one of the most important instruments in the implementation of regional autonomy.

Ideally, the existence of local regulations is directly proportional to the quantity and quality. However, in reality, there are currently many perda whose quality is still far from being good or are often termed "problematic regional regulations." Perda is said to be problematic when first, perda contradicts higher regulations and / or conflicts with the public interest; second, in its implementation it is not effective in the community; third,

⁶ See Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Bandung: Alumni, 1997, p. 248.

⁷ See Faisal Amrullah, "Kebijakan Umum dalam Politik Perundang-Undangan di Indonesia", *Jurnal Hukum*, Volume VIII Nomor 2 Edisi Juni, 2010, p. 26-30.

get rejection from the community because they are considered not taking sides with the community; fourth, local regulations do not support efforts to create a conducive business and investment climate in the regions.

Various studies have shown that there are many problematic regional regulations. The results of the research by the Monitoring Committee for the Implementation of Regional Autonomy (KPPOD) showed that of the 709 perda studied, 85.2% were problematic and only 14.8% were without problems.⁸ These problems can actually be overcome by conducting in-depth studies and scientific research, so that the results of the study indicate whether a regional regulation is needed and if necessary what arrangements should ideally be regulated in the perda itself. Studies and research are later known as Academic Texts (hereinafter referred to as NA).⁹

I Gde Pantja Astawa is of the opinion that NA is very important in the process of forming statutory regulations when faced with the problems of laws and regulations so far which have always been considered unresponsive, not egalitarian, not futuristic and generally of low quality.¹⁰ According to him, the solution to this problem is to conduct scientific research. Through NA, every Bill and Raperda that gets a scientific touch whose output can produce laws and regional regulations that are of higher quality and can be categorized as good legislation.¹¹

It is at this stage of the preparation of NA that the juridical, sociological, and philosophical basics receive an in-depth study. If necessary, before the preparation of NA is carried out, it is preceded by scientific studies and studies. Therefore, at the preparation stage of the NA compiled the basics, reasons, considerations that are not only political (for example, as the realization of a promise or program for the winner of the general election), but also juridical, sociological, economic, social, cultural considerations. Philosophical and so on. NA also can consider the benefits or consequences that will arise, such as state financial burdens and so on.

Jazim Hamidi stated that NA has a very important urgency in the formation of regional regulations. namely:

"The urgency of NA is to become a scientific benchmark, namely a text that can be scientifically accountable for a conception that contains the background, the purpose of the preparation, the objectives to be realized and the scope, scope, object or direction of regulating the draft regional regulation. NA will provide direction to the design stakeholders (drafter). Stakeholders, especially those

⁸ See Fachry Ali dan Kalla, "Tepat Redam Tuntutan Reposisi", dalam: Jazim Hamidi (ed), *Optik Hukum Bermasalah: Peraturan Daerah Bermasalah*, Jakarta: Prestasi Pustaka, 2011, p. 127-128.

⁹ See M. Roken Fadly MK, *Sifat Hukum dan Implementasi Penyusunan Naskah Akademis berdasarkan Sistem Perundang-Undangan di Indonesia*, Tesis pada Program Magister Ilmu Hukum Universitas Padjadjaran, Bandung, 2013, p. 6.

¹⁰ See I Gde Pantja Astawa, *Op. Cit.*, p. 109.

¹¹ *Ibid.*

holding positions as policy makers, will get adequate information in making decisions. Meanwhile, NA will serve as a reference for the designer to be able to determine what will be regulated and translated into legal sentences in a clear, firm, non-multi-interpretative local language. So as to realize the holistic enactment of a regional regulation in society so as to realize the ideals of Indonesian law as a rule of law where people live based on the law so as to create an independent, united, sovereign, just and prosperous Indonesia.¹²

In addition to the urgency above, there are 4 (four) other NA urgencies, namely 1). NA as a medium for harmonization and synchronization of the meeting of the concept of state law and laws that live in society, 2). NA as a real media for community participation to realize legal acceptance and enforcement, 3). NA as a recommendation as a result of systematic and comprehensive scientific thinking on the substance of the Raperda, 4). NA as a public control policy document on the implementation of a local regulation.¹³

Thus, the preparation of NA is expected to produce local regulations that are in accordance with AAPPP and be able to survive in the event of testing of perda both from the formal and material aspects of the perda.¹⁴ From the various descriptions above, it can be concluded that the existence of NA in the formation of perda is very important and urgent to produce good and quality perda. In order to produce such perda, NA as the foundation, foundation and scientific study of the Raperda material must be of good quality and quality. It can be estimated that if NA as the basis, foundation and scientific study of the Raperda material turns out to be not good and quality, of course this NA will affect the quality of the Raperda and perda produced. Therefore, it is important to know the good and quality NA efforts or criteria. For this purpose, the aspects relating to these issues will be described in the next section of this paper.

B. Implementation of academic drafting in the formation of regional regulations in

Indonesia

General description of Academic Manuscripts according to Law no. 12 of 2011. Article 1 point 11 determines that an Academic Paper is a text of the results of research or legal studies and other research results on a certain problem that can be scientifically justified. regarding the regulation of the problem in a draft law, Provincial, Regency / City Raperda as a solution to the problems and legal needs of the community.

¹² See Jazim Hamidi dan Kemilau Mutik, *Legislative Drafting*, Yogyakarta: Total Media, 2011, p. 179-180.

¹³ *Ibid.*, p. 117-132.

¹⁴ *Ibid.*

From this understanding, each NA must contain a portrait of the problem, its analysis and the solutions offered to overcome these problems. Annex I of Law no. 12 of 2011 regulates NA Systematics (see attachment 1). The systematics and main arrangements that must be regulated in the systematics then become a reference for measuring how the implementation of NA drafting in the formation of Perda. To see the implementation of NA preparation, one of them can be seen from the NA document that has been compiled. For this reason, this subsection will present the results of NA documents for several regions, including:¹⁵ (1) Sukabumi City, including: (a) Academic Paper on the Draft Regional Regulation of Sukabumi City on Poverty Reduction; and (b) Academic Paper on the Draft Regional Regulation concerning the Sukabumi Regional Tourism Development Master Plan for 2017-2025; (2) Jembrana Regency: Academic Paper on the Draft Regional Regulation of Jembrana Regency concerning Investment;¹⁶ and (3) Bandung Regency:¹⁷ Academic Text of Bandung Regency Regional Regulation Draft on Bandung Regency Regional Health System. The selection of NA as described above was carried out with the following considerations: first, the period of preparation, NA was prepared after the enactment of Law no. 12 of 2011; second, the availability of NA from reliable sources.

Analysis of the NA document is carried out through 2 forms of analysis, first: general analysis by paying attention to the systematic preparation of NA; second, a special analysis with regard to the material or substance of the chapter contained in NA.

1. Analysis of the Academic Manuscript Documents of the Draft Regional Regulation of the City of Sukabumi on Poverty Reduction (hereinafter referred to as NA Poverty Reduction) compiled in 2018 (see NA Systematics)

From the systematics (table of contents) of NA above, it can be seen that the number of Chapters is in accordance with Attachment I of Law no. 12 of 2011. However, it is necessary to pay attention to Chapter II, which does not classify the substance according to Appendix I which determines that Chapter II of Theoretical and Empirical Studies consists of: (a) Theoretical Study; (b) Study of principles / principles related to norm formation; (c) Study of the implementation practice, existing conditions, and problems faced by the community; and (d) Studies on the implications of implementing the new system which will be regulated in a Law or Regional Regulation on aspects of community life and its impact on aspects of the burden on state finances. If you pay attention, subsection c and subsection d are not included in the table of contents. However, it must be checked again on the substance / material of Chapter II on NA Poverty Alleviation. Author search

¹⁵ Can be downloaded at the address: <http://jdih.sukabumikota.go.id/home/dokumen/naskah-akademik>

¹⁶ Can be downloaded at the address https://simdos.unud.ac.id/uploads/file_penelitian_dir/db16c32b21fc7a14180e69330e926e7b.pdf

¹⁷ Can be downloaded at the address <http://jdih.bandungkab.go.id/hukum/search?kategories=15&nomor=&tahun=1&tentang=&submit=>

results. There is no comprehensive analysis of the conditions for implementation practices, existing conditions, and problems faced by the community, even if there is Chapter II NA Poverty Reduction, especially in section 2.6 concerning Development Policies in Poverty Reduction, only contains the long-term development direction of the Sukabumi City Region in 2005- 2025, especially with regard to poverty reduction. This subsection does not contain a study or analysis of the implementation of poverty management practices, existing conditions and problems faced. In this chapter, the existing conditions related to poverty problems and their handling so far should be presented and analyzed. Then, this Sub-chapter also needs to analyze the factors that cause the emergence of current implementation practices that cause the problem of poverty in Sukabumi City to not be resolved optimally so that a regional regulation is needed as a solution.

The problem reappears in Section (d). A study of the implications of implementing the new system that will be regulated in a law or regional regulation on aspects of community life and its impact on aspects of the state's financial burden should be contained in Chapter II. The existence of this subsection is very important to predict the implications of implementing the new system regulated in the Perda as a solution to the problems faced. This subsection provides an overview to policy makers that the draft regional regulation produced is able to overcome poverty problems in the city of Sukabumi. No less important, this section will ensure that the formation of a regional regulation provides greater benefits than the costs incurred. The absence of this study will make the implications of the regional regulation unpredictable whether it will be effective and efficient or vice versa.

Further analysis is carried out on Chapter IV concerning the philosophical, sociological and juridical foundations, particularly in the section that explains the sociological and juridical foundations. For this purpose, the author needs to quote a description of the basis contained in the NA Poverty Reduction. (see Academic Paper) If you look at it at a glance, it can be seen that Chapter IV has included a Sub-section on the sociological and juridical foundations. However, if we look at the substance, the study / material in the section on sociological basis above only re-describes what is meant by sociological basis. A similar problem also occurs in the study / material in the juridical foundation section which only describes what is meant by the juridical basis.

The research team argues that the section on sociological foundations should explain an analysis or study that shows that the formation of the Perda will meet the needs of the community in various aspects. The real sociological foundation concerns empirical facts regarding the development of problems and needs of society and the state. Thus, this section will ensure that the formation of this regional regulation can answer the needs of the community. This section is actually a crystallization of the discussion in Section C in Chapter II. However, the absence of discussion of this subsection has implications for the discussion of the sociological basis in Section b of Chapter IV. With regard to the juridical basis, in essence, this foundation must show that the formation of a regional regulation will

solve legal problems. What are the legal problems? Annex I to Law no. 12 of 2011 has provided an overview of several legal issues, including: outdated regulations, unharmonious or overlapping regulations, types of regulations that are lower than the Law so that their effectiveness is weak, the regulations already exist but are inadequate, or the regulations it doesn't exist at all. Thus, the juridical basis will show what legal problems are faced in Sukabumi City related to poverty reduction. Starting from this, then in Section c of Chapter IV NA Poverty Reduction does not contain this.

2. Analysis of the Academic Manuscript Documents of the Draft Regional Regulation of Jembrana Regency on Investment (hereinafter referred to as NA Investment)

NA Investment was compiled in 2016 as a scientific study in the drafting of a Regional Regulation on Investment. (see NA systematics) From the NA systematics above, it can be seen that the number of Chapters is in accordance with Attachment I of Law No. 12 of 2011. Unlike the case with NA Poverty Alleviation which does not include Sub-section c and subsection d in Chapter II in the table of contents, this NA clearly contains the two subsections referred to. However, even though this chapter has formally existed, it is also necessary to study further how from the material / substance side whether it is as expected. This is important to examine, considering the analysis on NA Poverty Reduction which shows that formally Sections c and d in Chapter IV are in systematics (table of contents), but after further investigation it turns out that from the substance / material side of the study, the sociological and philosophical foundations are not yet suitable. with what Appendix I of Law no. 12 of 2011. (see NA).

If we look closely, the material / substance in the above sub-chapter has not shown the implementation practices in the implementation of investment so far and the problems faced related to the implementation of investment for enhancement or investment in Jembrana Regency. These things are very important to formulate internal solutions that will be regulated in the Regional Regulation on Investment.

Furthermore, the Sub-chapter will also be reviewed which discusses the Study of the Implications of the Aspects of Community Life and the Impact on the Aspects of Regional Financial Burden. With regard to this subsection, it is not seen what the implications of implementing the new system regulated in the Perda are a solution to the problems faced. So that it is not clear whether the regional regulations that will be formed can overcome the problems at hand. In addition, this section does not analyze the implications for regional financial aspects. Indeed, it does say that there are implications for regional financial aspects. And we can be sure that the formation of a regional regulation will have implications for regional finances.

Therefore, the analysis in this section does not stop there, but further than that, NA must be able to answer how big the implications are, both for the income and the burden of the APBD (expenditure required). In addition to the analysis carried out on Chapter II, the author has an important view. to analyze Chapter IV on Philosophical, Sociological and Juridical Foundations, but given the limited space, the analysis in this section only focuses on the juridical basis. (see NA) Regarding the analysis or juridical basis study, the author assesses that the substance or material in the above subsection has not shown that there are legal issues related to investment in Jembrana Regency. Thus, the study on the juridical basis in NA is not in accordance with what was desired in Attachment I of Law no. 12 of 2011.

Analysis of the 2 (two) NAs above shows that in practice it is found that NAs have not met the requirements as mandated in Attachment I of Law No. 12 of 2011. Thus, before questioning the number of problematic regional regulations or discussing quality regional regulations, it is important to question whether the NA that has been drafted is of quality or problematic. Regarding this, the Former Director General of Legislation and Regulations at the Ministry of Law and Human Rights, A.A Oka Mahendra in his book *Legal Drafting Practice Guidelines*, stated that there are still many NAs who are not academic. A.A Oka Mahendra in full stated:

In the practice of preparing an Academic Paper, it has various weaknesses ranging from weaknesses in research methodology or studies, weaknesses in theoretical and empirical studies, and weaknesses of philosophical, sociological and juridical foundations. Research methods tend to limit themselves to juridical-normative and empirical (sociological) research methods.¹⁸

In the investigation of the writing team, there were various problems that affected the quality of NA compilation, among others caused by the preparation of NAs after the Raperda was drafted, inadequate time for NA preparation, improper use of the budget, inadequate composition of the drafting team membership and facilities and infrastructure less supportive.¹⁹

3. Ideas of Good and Quality Academic Draft Preparation

The various problems above indicate that there are various problems in the practice of preparing NA. These various problems have implications for the quality of NA produced. To overcome this, the author proposes an idea or concept that can be used to produce quality NA, not just that. In this concept or idea, the author also proposes a pattern so that the NA can produce quality regulations.

¹⁸ See A.A Oka Mahendra, *Pedoman Praktis Legal Drafting*, Malang: Setara Press, 2017, p.153

¹⁹ See M. Roken Fadly, MK, *Sifat Hukum dan Implementasi Penyusunan Naskah Akademis Dalam Pembentukan Peraturan Daerah Berdasarkan Sistem Perundang-Undangan di Indonesia*, Tesis pada Program Pasca Sarjana Universitas Padjadjaran, Bandung, 2013, p. 141.

Preparation of good and quality²⁰ NA is the preparation of NA in accordance with statutory regulations and the theory of the formation of statutory regulations. According to the author, the phrase "in accordance with statutory regulations" has 2 (two) meanings, namely (1) material content and NA format in accordance with the aims and objectives mandated by statutory regulations²¹ (hereinafter referred to as NA material requirements); (2) procedures, procedures for preparation of NA and use of NA in accordance with those mandated by statutory regulations²² (hereinafter referred to as formal requirements of NA). Based on the meaning of the phrase "in accordance with statutory regulations", a good NA is an NA which meets the material and formal requirements for the preparation of NA.²³ These requirements are closely related to statutory regulations and the theory of the formation of statutory regulations. a. NA Material Requirements.

In the author's view, the actual material requirements for NA are contained in Attachment I of the PPP Law and Attachment II to Permendagri Number 53 of 2011. Referring to the two regulations, according to the author, the material requirements relate to the content material and the NA format. To be able to say good, NA load material contains at least:

- 1) Problems faced in the life of the nation, state and society as well as ways to overcome these problems.
- 2) Legal problems faced as a reason for the formation of the Raperda as a legal basis for solving or solving problems in the life of the nation, state and society.
- 3) Considerations or philosophical, sociological, and juridical basis for the formation of the Raperda.
- 4) The targets to be realized, the scope of the regulation, the scope and direction of the regulations in the Raperda.
- 5) Theoretical studies (principles and principles related to norm formulation) and empirical practice (studies on implementation practices, existing conditions, and problems faced by the community and studies on the implications of implementing the new system to be regulated in laws or local regulations on aspects of community life and its impact on the financial burden aspects of the state.

²⁰ *Ibid.*, p. 37.

²¹ The laws and regulations referred to here, in particular, are PP Law and Permendagri No. 53 of 2011.

²² *Ibid.*

²³ Researchers refer to Appendix I of the PPP Law and Attachment II to Permendagri Number 53 of 2012.

Apart from the content material, the NA material requirements relate to the format specified in Attachment I to the PPP Law, which consists of a title, foreword, a table of contents, 4 (four) chapters, bibliography and attachments.²⁴

b. Formal Requirements.

The formal requirements do not only focus on the techniques or procedures for preparing NAs, but also cover the procedures for the preparation and use of NA in a series of activities to form a perda until the perda is passed. Therefore, the author divides the formal terms into:

- 1) The formal requirements for preparation are related to the supporting aspects for preparing NA, which include 2 (two) main aspects, namely: (a) the right or ideal time to prepare NA; (b) drafting team.
- 2) The formal terms of use relate to how to use the NA that was compiled earlier in the process of forming a regional regulation.

The author argues that the first formal requirement for drafting, namely the ideal time for preparation of NA, is before the drafting of the Raperda. Furthermore, with regard to the second aspect of the formal requirements for preparation, namely the drafting team. These aspects if detailed include: the formation of the drafting team, the commitment of the drafting team, the procedural rules of the drafting team, the identification of the advisory group, the arrangement of the work completion schedule, revision and finalization. The most important points in this aspect are the drafting team, budget and infrastructure. The drafting team should consist of a group of academics related to the problem being studied, including academics who have in-depth knowledge of technical issues of one or more experts in the socio-economic field, legal experts who specialize in the substance being handled and who are skilled in drafting techniques. laws and regulations, and other experts as needed.²⁵

The selection of team members must balance two factors, including (1) the membership of the drafting team should not be too narrow, namely: not only consisting of legal academics. The drafting team should be a combination of different skills and interests in order to be able to solve the main issue effectively,

²⁴ For an overview of the NA format and systematics, see Chapter III of this thesis on the Legal Basis and Preparation of NA in the Formation of Regional Regulations according to the Legislative System in Indonesia.

²⁵ See Jazim Hamidi, *Op., Cit.*, p. 114.

- (2) the membership of the drafting team should not be too large because it can lead to inefficient NA drafting process.²⁶ The development team should be supported with adequate advice and infrastructure, including administrative staff, other supporting staff, and funding to carry out their activities.

On the other hand, the authors argue that it is also important to arrange for the Development Team to be people who have a certificate of expertise to compile NA, if not all Team members, suppose the Team Leader must have this certificate. A certificate of expertise has an important meaning as a sign that it has met the criteria or prerequisites to be able to compile a good and quality NA and Ranperda.

Mistakes in the preparation of NA and Ranperda can have broad consequences for various interests, including the interests of the nation and state, local government and most importantly the interests of the community. To avoid this mistake, the presence of a team leader who has a certificate of expertise is urgent. This is even more so when compared to other professions, for example an advocate who can practice after having a Member Card (KTA) which to obtain it must take special education, take exams and after graduation must attend an internship for 2 (two) years. After that, he has the right to get KTA. If, an advocate who deals with the life of a person or group of people only requires special expertise obtained by selection, it is only natural that a legislative drafter (compiler of NA and laws and regulations) whose duties are related to broader aspects, not only limited to someone. or a group of people, but it concerns the interests of the nation, state, region and society at large.

Thus, a legislative drafter must undergo rigorous training and exams using good methods and procedures, these various activities will later be proven by signs in the form of certificates of expertise, like an advocate and accountant. After having this certificate, a person can carry out his duties as head of the NA and Ranperda drafting team.

The next formal requirement, namely the formal terms of use. This requirement is a follow-up to the formal requirements of the drafting. The drafted NA must really be considered by the legislators (Pemda and DPRD) in formulating and selecting policies which will later be formulated and then passed into Perda. Ideally, because NA is a comprehensive and in-depth study of the problems faced by regions which are then regulated in the Perda, it is fitting that the material in the Perda is appropriate, in line and in sync with the results of the NA study.

²⁶ *Ibid.*

A high quality regional regulation is likely to be created if it is supported by a quality NA. It is a fact that must be acknowledged that in practice it is often encountered that NA does not meet the formal and material requirements of a good NA preparation. On the one hand, not all qualified NAs can produce quality regulations. This can occur because the quality NA is not used and considered by the legislators as much and as possible (the formal requirement for using NA). Things like this are a form of problem in the scope of using NA in the formation of regional regulations. To avoid this, regional regulation makers must consider and use NA to select, formulate, and determine the Raperda material into a Perda.

Conclusion

The formulation of NA in the formation of local regulations has a very important urgency to create good and quality local regulations. Given its vital urgency in the formation of perda, it is hoped that the legislators (local government and DPRD) will compile NA before drafting the Regional Regulation Draft. To provide a legal position for the formulation of NA in the formation of regional regulations, the preparation of NA is regulated in statutory regulations, especially Law Number 12 of 2011 concerning the Establishment of Legislation and Regulation of the Minister of Home Affairs Number 53 of 2011 concerning the Formation of Regional Legal Products.

All parties, both formers of regional regulations, academics and practitioners in preparing NA are expected to pay attention to and fulfill the material and formal requirements for preparing NA, in order to produce quality NA, so that NA can be used as a reference, direction and guidelines for the contents or material of the perda to be prepared. The requirements for drafting a good and quality NA above will have implications for improving the quality of the Perda.

REFERENCES

Book

- Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Bandung: Alumni, 1997
- Fachry Ali dan Kalla, "Tepat Redam Tuntutan Reposisi", dalam: Jazim Hamidi (ed), *Optik Hukum Bermasalah: Peraturan Daerah Bermasalah*, Jakarta: Prestasi Pustaka, 2011.
- I Gde Pantja Astawa dan Suprin Na'a, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, Bandung: Alumni, 2008.
- Jimly Asshiddiqie, *Perihal Undang-Undang*, Jakarta: Raja Grafindo Persada, 2010.
- Maria Farida Indarti, *Ilmu Perundang-undangan 2: Proses dan Teknik Pembentukannya*, Yogyakarta: Kanisius, 2007.

Mahendra Putra Kurnia (et.al), *Pedoman NA Perda Partisipatif: Urgensi, Strategi, dan Proses Bagi Pembentukan Perda yang Baik (Cetakan Pertama)*, Yogyakarta: Kreasi Total Media (KTM), 2007.

Journal / Papers / Thesis

- Moh. Hasan Wargakusumah, "Proses Penyusunan Naskah Akademis dikaitkan dengan Inpres Nomor 15 Tahun 1970", *Majalah Hukum Nasional (Badan Pembinaan Hukum Nasional Departemen Kehakiman)*, No 2. Faisal Amrullah, "Kebijakan Umum dalam Politik Perundang-Undangan di Indonesia", *Jurnal Hukum*, Volume VIII Nomor 2 Edisi Juni, 2010.
- Jazim Hamidi dan Kemilau Mutik, *Legislative Drafting*, Yogyakarta: Total Media, 2011.
- M. RokenFadly MK, *Sifat Hukum dan Implementasi Penyusunan Naskah Akademis berdasarkan Sistem Perundang-Undangan di Indonesia*, Tesis pada Program Magister Ilmu Hukum Universitas Padjadjaran, Bandung, 2013.

Legislation

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
UU Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
Permendagri Nomor 53 tahun 2011 tentang Pembentukan Produk Hukum Daerah

Internet

- Kementerian Dalam Negeri, "Mendagri Temukan Perda 369 Perda bermasalah 2011", 2011. <<http://www.depdagri.go.id/news/2011/01/18/mendagri-temukan-369-perda-bermasalah>> [30/04/2010].
- Metrotv news, "Banyak Perda dibuat Tanpa Perencanaan Matang", 2012. <<http://metrotvnews.com/read/news/2012/01/09/77922/Banyak-Perda-Dibuat-Tanpa-Perencanaan-Matang/6>> [1/04/2012].
- Depkumham, "Laporan RAKERNIS 2009", 2009. <<http://www.djpp.depkuham.go.id/files/laporan/2009/laporanrakernis2009.pdf>> [30/02/2012].