

The Effectiveness of Program Formation of Program Regional Regulation in West Sulawesi Province

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Abstract: *Preparation of Local Regulation Formation Program Not Effective in West Sulawesi Province. This study aims to determine the effectiveness of the preparation of Regional Regulation Formation Program in West Sulawesi. This type of research uses empirical research, by conducting research at the Local Government Legal Bureau and the Agency for the Establishment of the Regional Regulations of the Regional House of Representatives of the Province of West Sulawesi. Data collection is done through interviews and documentation. While data analysis is done by qualitative analysis of primary and secondary data which have been obtained from research result. The result of the research is the Formulation of Program for the Formation of Regional Regulation has not been effective because in the process of submitting the proposal of the Regional Regulation is not careful in realizing the higher legislative order and in the selection phase of proposal of Regional Regulation don't pay attention to priority scale based on Local Government Work Plan. Then, the ineffectiveness of the formulation of Regional Formation Program in West Sulawesi Province is caused by the factor of law substance, legal structure, facility or facility, and legal culture.*

Keywords: Effectiveness, Regulation, Program Formation, Program Regional

1. Introduction

There is a difference of nomenclature of the stages in the planning stage of the formation of Regional Regulation between Article 1 number 10 of Law Number 12 Year 2011 on the Establishment of Legislation and Article 239 of Law Number 23 Year 2014 on Regional Government. Based on Law Number 12 Year 2011 on the Establishment of Laws and Regulations using the nomenclature of "Local Legislation Program" while under the Law of Local Government using nomenclature of Program Formation of Regional Regulation.

The theoretical basis of these nomenclature differences is due to the theory of power separation. The concept of separation of powers on the authority to establish "Law" is attributed to the House of Representatives together with the President. While the legal products established in the provinces, districts and municipalities by the Regional Government together with the Regional House of Representatives, namely the Regional Regulation, not the law.

The term "legislation" only becomes the main property of the People's Legislative Assembly (at the center of government), whereas the formation of a law other than the law doesn't conform to the term "legislation." In that context, the activities undertaken in the planning stages of the formulation of the Local Regulation are changed into "Regional Regulation, "is no longer in the term" Local Legislation Program".

The function of the formation of the Act with the function of the formation of the Regional Regulation is played in two sides of the government, the People's Legislative Assembly

with the President, the Regional House of Representatives with the Regional Government. But the definition of the Law in the strict sense is directed to the term legislative act, not the executive act. This is due to the result of the legislative act forming process, the role of the legislative body determines the material legality of the regulation as a product produced by the legislative act, hereinafter referred to as legislation (Asshiddiqie, 2006).

In the formation of laws and Regional Regulations shall have a juridical, sociological, and philosophical basis (Ruslan, 2013). In addition must also pay attention to the gap with other legal norms (Kelsen, 2011). There can be no conflict between one rule and another (Damang, 2017). The requirements are actually on the ground, so that in the preparation of the Program for the Formation of Regional Regulation should pay attention to the priority scale as mandated by Article 15 paragraph 2 of the Minister of Home Affairs Regulation of the Minister of Home Affairs Number 80 Year 2015 on the Formation of Regional Law Products, including: (1) Orders of higher legislation; (2) Regional development planning; (3) The principle of autonomy and duty of assistance; (4) Aspirations of local communities.

Interesting fact in practice is, in West Sulawesi Province in the preparation of Regional Regulation Formation Program inconsistency occurred. It is shown between the proposed Regional Regulations submitted with the stipulated the reduction of the number of types of Regional Regulations. In the proposed phase of the proposed Regional Regulation 32 (thirty two) types of Regional Regulations, but at the stage of determination is reduced the number of types of Regional Regulations, namely 29 (twenty-nine) proposed Regional Regulations for the Year 2017.

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In the preparation of the Program for the Formation of the Local Regulation indicates that it doesn't run effectively. Measures to assess an effective activity, if between the planned and the resulting equal. Supposedly, with the planning of 32 (thirty two) number of proposed type of Regional Regulation then born in the determination phase also amounted to 32 (thirty two) types of Regional Regulations.

These facts give rise to a temporary suspicion that in the process of filing and selection in the Bureau of Legal and Regulatory Body of the Regional Regulation is not careful in implementing the requirements of the formation of Regional Regulations in the planning stages which must be based on priority scale. In relation to the social reality, it is also a legal substance in re-analyzing the factors that inhibit the ineffective formulation of the Program for the Establishment of Regional Regulations in the socio-legal level as a whole (legal system), including: legal substance, legal structure and legal culture (Friedman: 1975). Including to be important also re-test one of the factors that influence law enforcement, in the form of facilities (Soekanto, 2005).

In reality (*das sein*), indicating that the preparation of Program Formation of Regional Regulation doesn't meet the principle of careful planning. Thus there is a gap between *das sein and das sollen*, as the main foothold for in-depth research and study. Based on the above description, it becomes relevant to review and analyze the Formulation of Program Formation of Regional Regulation has not been run effectively in West Sulawesi Province.

2. Method of the Research

This research was conducted in West Sulawesi Province precisely in Bureau of Law of Local Government and Agency for Establishment of Local Regulation of West Sulawesi Provincial People's Representative Council. The reason for choosing the location of this study, on the basis of consideration that in this location, the preparation of the Program Formation of Regional Regulation starting from the stage of submission of the proposed Regional Regulation until the stage of its determination.

This type of research is empirical research. The nature of the research is descriptive. The objective is to express empirically the effectiveness of the formulation of Regional Regulation Formation Program in West Sulawesi Province.

In this study used interview and documentation techniques. Interview technique is conducted on 4 (four) people consisting of: Head of Legal Bureau, Head of Sub Division. Drafting of Regional Regulation and Draft of Governor Regulation of Legal Bureau of West Sulawesi Provincial Secretariat, Head of Regional Regulatory Body for Regional House of Representatives of West Sulawesi Province and Head of Sub Division. Legislation, Reporting and Library of the Secretariat of the Regional House of Representatives of the Province of West Sulawesi. While the documentation is done through the collection of a list of proposals Regional Regulations, and the collection of literature on the law of the

formation of Regional Regulations.

3. Results and Discussion

3.1 Results

In order to provide an assessment of the effectiveness of the Formulation of Program for the Establishment of Regional Regulations in the Province of West Sulawesi, it is classified into two parts: (1) Reviewing the stages of proposing the Regional Regulation either on the initiative of the Regional Government and Provincial People's Representative Council; (2) Reviewing at the Selection stage of the proposed type of Regional Regulation, whether implemented by the Regional Government Bureau of Law or implemented by the Regional Regulatory Body for the Provincial House of Representatives.

At the first stage, namely the Organization of the Regional Apparatus and the Provincial People's Representative Council in submitting the proposed Regional Regulation found inaccuracy in implementing the Local Government Work Plan. The Vision of the West Sulawesi Provincial Government mentions "Creating a Prosperous, Major, and Noble Society" then based on that vision, spawned a concrete government mission with "Improving Access and Quality of Educational Services."

The mission focuses on efforts to improve the quality of integrated education, especially in the application of school-based national curriculum, moral, character, linguistic, emotional, aesthetic and religious and spiritual attitudes, appreciation of arts, culture and the development of youth and sports creativity and gender equality.

Records of recommendation based on the results of the 2016 Regional Development Planning Meeting as proposed by the Regional Education Authority Organization include: (1) Availability of education facilities and infrastructure in every level of education is not in accordance with the National Education Standards; (2) The opportunity to obtain education is still limited at every level of education; (3) Low service of Early Childhood Education.

To implement the social issues recommended by the Regional Apparatus Organization for educational affairs from the first and second points, it is certainly difficult to follow up in the formation of a Regional Regulation. If the Regional Regulation is formed, the budget for it will not be available, because the balance of financial balance of education funding level of Senior High School becomes the authority of Governor based on the mandate of Local Government Law.

The results of the 2016 Development Planning Meeting of stakeholders can only map social issues without linking them to the prevailing secondary law rules (Hart, 2013). Based on the observation of the proposed Regional Regulations submitted by the Regional Apparatus Organization and the proposed Regional Regulations submitted by the Provincial House of Representatives there is no nomenclature of the

Local Regulation on the Management of Secondary Education from the Regency/City to the Province.

The regulation on the transfer of authority occurred in 2014 following the institutionalization of the Law on Regional Government. However, from the Regional Education Devices Organization and the Provincial People's Representative Council didn't immediately follow up and discuss it at the Development Planning Meeting held by the Head of the Regional Development Planning Board of West Sulawesi Province. Respondent from Head of Legal Bureau, Head of Sub Division. The drafting of the Regional Regulation and the draft of the governor regulation of the Bureau of the Regional Secretariat of West Sulawesi Province, the Chairman of the Regional Regulatory Body of the Regional House of Representatives of the Province of West Sulawesi and the Head of Legislation, Reporting and Library of the Secretariat of the West Sulawesi Provincial House of Representatives admitted that the circumstances were caused by his inadequacy in responding to the most recent Local Government Act.

As a result of the law then, the education service at the senior high school level stops. From 2014 to 2018 the state financing of education services can't be executed in a timely manner. The ineffectiveness of the preparation of the Program for the Establishment of Local Regulations without regard to the priority of the higher priority order law has in fact implied on the aspect of educational service which aims to realize the advanced and noble society doesn't work.

This condition also shows the simplicity of the stages of submission of the proposed Regional Regulation controlled by the Regional Education Device Organization and the Provincial People's Representative Council is not careful in implementing the Regional Development Plan of West Sulawesi Province. At the same time not careful in implementing the requirements of the priority scale formation of the Regional Regulation because the order of the law is higher.

The same occurrence subsequently occurred in the selection stage of the proposed Regional Regulation whether implemented by the Government Law Bureau or implemented by the Agency for the establishment of the Regional Regulation of the Provincial People's Legislative Assembly. There is a proposed Regional Regulation with the nomenclature of the newborn Mother and Child Health Proposed by the Health Office but by the Government Law Bureau regard it as a Regional Regulation that doesn't meet the priority scale. The regional regulation is qualified as there is no firm stipulation mandating it from the higher laws.

The Development Board of the Provincial People's Legislative Council has in fact also failed to capture the message of the Organization of Regional Devices recommendations on Women's Empowerment and Child Protection at the 2016 Development Planning Meeting, so that none of them proposed such a Regional Regulation. At the time of the Development Planning Meeting, the Regional Devotion Organization for Women's Empowerment and

Child Protection revealed the social facts, namely: maternal mortality and childbirth rates are quite high and half of women are experiencing poor nutrient intake.

In essence, the recommendation note from the Regional Device Organization is very relevant and significant with the vision of the West Sulawesi Provincial Administration "Achieving Prosperous Society" In line with its mission that states "Improving Access, Quality of Health Service and Quality of Life." The mission focuses on efforts to improve the quality of health and quality of life related to the formation of small, happy and prosperous families.

Based on the results of the research found the cause of the fall of the proposed Regional Regulation as proposed by the Head of Sub Division. Preparation of the Draft of the Regional Regulation and the draft of the governor of the Legal Bureau of the Regional Secretariat of the Province of West Sulawesi and the Head of Sub Division. Legislation, Reporting and Library of the Secretariat of the Regional House of Representatives of the Province of West Sulawesi, namely: the nomenclature is never ordered by a higher law. The proposed Regional Regulation has been recommended to the Ministry of Home Affairs and the Ministry of Law and Human Rights, but the results are the same, otherwise it should be continued in the formulation of the Local Regulation Draft.

In the normative juridical perspective of the Local Regulation with the nomenclature of the Health of Newborn Mother and Child can be passed in the selection stage up to the stipulation stage. Procedural technics can be pursued, namely by qualifying as a Regional Regulation established on the scale of priorities Regional development planning. Although there is no higher order law, it is still eligible to continue in institutionalization on the condition that the substance of the norm and its provisions aren't contradictory to the higher laws.

Based on the above description it can be said also that the Officer of the Government Law Bureau and the Official of the Regulatory Body of Regional Regulation is not careful in the control of the formation of the Regional Regulation. In their understanding it considers the requirement of the priority scale of the formation of a Regional Regulation only in the context of a higher order law. Other conditions will be void if there is no mandate from the higher laws.

Understandable if such legal understanding of the officials, because it is the requirement of the scale of priority formation of Regional Regulation based on Article 15 paragraph 2 of the Minister of Home Affairs Regulation Number 80 of 2015 on the formation of Regional Law Products show the cumulative nature. All conditions contained in its provisions shall be complied with because of its legal language which is phrased and as an integral part.

Based on the results of this study, it can be said that the failure of the preparation of the Program for the Formation of Local Regulations runs effectively due to inadequate Regional Apparatus Organization concerned in proposing the Regional Regulation concerning the management of

secondary education (from district to province). The organization of the regional apparatus concerned doesn't yet understand the legal norms in stages, layered in a hierarchy of arrangement (Syamsuddin, 2011). Including not understanding the "Rules" as a framework of interrelated legislation (Mahfud, 2009). Whereas the formation of a Regional Regulation can't be separated from a condition whether there is already a regulation that regulates the problem or not (Ruslan, 2013).

3.2 Discussion

Based on the results of the research that has been stated above, the fundamental issue that causes the ineffectiveness of the formulation of the Program for the Formation of Regional Regulation is summed up in two fundamental issues, namely legal factors and non-legal factors. Legal factors are internal factors that don't run between what is in the law and reality. While the non-punishment factors are external factors that interconnect in disrupting the ineffectiveness of the Government Legal Bureau Officials and the Agency for the Establishment of Regional Regulations in exercising their authority.

Inaccurate Regional Education Organization, Education Bureau, Government Law Bureau, and Local Regulatory Body in implementing the requirement of priority scale formation of Regional Regulation. Especially on the requirements of a higher order law or regional development planning shows as a symptom of understanding the establishment of Regional Regulation is still lacking. Such a matter would lead to consequences as a bad administrative action (Sudjito, 2018) doesn't exercise its authority as a government official. They can't postulate, for not knowing the law so as not to obey it, because the fundamental legal principle requires "*Ignorantia Leges Excusat Neminem*," which means ignorance of the law is not a forgiving excuse (Hiariej, 2014).

Other internal factors that become obstacles so that the preparation of the Program Formation of Regional Regulations in the Province of West Sulawesi is not running effectively, namely the substance of the law. The substance of the law is not clear due to 2 (two) issues, including: (1) There is no legislation regulating the procedures for the preparation of the Program for the Formation of Regional Regulation; (2) The form of legal products that will regulate the procedures for the preparation of Program for the Formation of Regional Regulation based on the mandate of Law Number 12 Year 2011 concerning the Establishment of Laws and Regulations of the Minister of Home Affairs Number 80 of 2015 are at odds with each other.

The circumstances of the law have inevitably resulted in confusion in its interpretation and application. Unclear provisions on the procedures for the preparation of the Program Formation of Regional Regulations, then the substance or material is certainly very difficult for the apparatus to enforce legislation well. It is very determined or influenced when the process of drafting a legislation is done (Soekanto, 1985).

While the external factors as the main non-punishment factor due to the legal structure, facilities, and legal culture. The legal structure in the sense of government apparatus consisting of the Legal Bureau Official and Officers of the Formation Body of the Regional Regulation doesn't have the ability in implementing the priority scale requirement of the formation of the Regional Regulation. This is due to internal circumstances that never participate in the training of drafting of Regional Regulations. Most of them are educated at the level of education, but not the level of education becomes a guarantee for those skilled in selecting the proposed Regional Regulations in line with the Regional Development Work Plan or higher order law. A situation that shows the inability to review the proposed Regional Regulation is fulfilled as a priority scale is a barrier caused by itself. The government apparatus has not had innovative power, so limited its ability in establishing itself as a government organizer (Soekanto, 2005)

Then about the factor of facilities is also a factor inhibiting the ineffective preparation of the Program formation of Regional Regulations in the Province of West Sulawesi. Most of the proposed Regional Regulations aborted in the stipulation stage are in fact caused by a budget that is not available from the relevant Regional Apparatus Organization that submitted it. It is difficult for the government apparatus to exercise its actual role and authority without sufficient financial means. Therefore, for the preparation of Program Formation of Regional Regulations can run effectively, of course if the financial means doesn't exist, it must be held (Soekanto, 1985).

The last external factor, namely the legal culture. The legal culture is as attitudes and values that have to do with law and the legal system, along with attitudes and values that have positive and negative effects on behavior related to law (Friedman, 1975).

The relevant Regional Device Organization and the Regional House of Representatives of West Sulawesi Province which is charged with the authority to propose the Regional Regulations shows that the legal culture is passive and conservative. Each Regional Device Organization has not carried out legal compliance based on internalization standard (Ali, 2009). They averaged awaiting request from the Government Law Bureau to submit a Regional Regulation, even sent out many times new proposed Regional Regulations relating to the institution.

Conditions are more worrisome, especially in the Provincial People's Legislative Assembly. Truly they are passive and conservative. Those who are burdened with the authority to form a Regional Regulation and as representatives of the people, but very minimal in terms of proposing the Regional Regulations. The same incident occurred in the Government Law Bureau and the Local Regulatory Body, their work patterns always based on speed, but minimal accuracy. Each proposed Local Regulation is passed in the selection stage without careful consideration based on higher order laws and regional development planning.

Legal culture occurring in both the Regional Apparatus Organization, the Provincial House of Representatives, the

Government Law Bureau and the Regulatory Body of Regions indicate that in addition to their still low legal awareness, they are also qualified as parties who tend to maintain the status quo (Soekanto, 2005). As a result, the relationship between government and society is increasingly distant and doesn't show a government that prioritizes the welfare of its people.

4. Conclusions

The formulation of the Program for the Establishment of Regional Regulations in West Sulawesi Province has not been effective yet. It is shown from the stages of submission by the Regional Apparatus Organization and the selection stage of the proposed Regional Regulation in the Legal Bureau and the Establishment Board of the Regional Regulation is not in accordance with the priority scale outlined in Article 15 paragraph 2 of the Minister of Home Affairs Regulation Number 12 of 2011.

Factors that affect the preparation of the Program formation of Regional Regulations in the Province of West Sulawesi is not effective, namely the substance of law, legal structure, facilities, and legal culture. Organization of the Regional Devices of Education Affairs Bureau of Legal and Regulatory Body of the Regions shall be careful in the preparation of the Program for the establishment of the Regional Regulation by taking into account the higher laws and the Regional Development Planning Program. Regulation of the Minister of Home Affairs Number 80 of 2015 shall regulate the uniformity of provisions on the procedures for the preparation of the Program for the Establishment of Regional Regulations in every Provincial Region, Regency and Municipality in a government regime based on a unitary state. Need to improve the ability of structures in the law firms and the Agency for the Establishment of Regional Regulations through the guidance of the drafting of Regional Regulations. Financial facilities in the preparation of the Program for the Establishment of Regional Regulations should be provided, and the culture of the government organizers involved in the preparation of the Regional Regulatory Formation Program must be professional in order to realize the formulation of an effective Regional Regulation Formulation Program.

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