

Public Participation in the Establishment of Regional Regulation in Humbang Hasundutan Regency

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ABSTRACT

This study discusses the participation of the community in Humbang Hasundutan Regency in the formation of regional regulations that have been regulated in the Law of the Republic of Indonesia No. 12 of 2011 concerning the Establishment of Laws and Regulations. The formation of regional regulations starts from the planning, preparation, discussion, promulgation, and dissemination stages. This research uses a conceptual framework regarding regional regulations as well as public participation in the process of forming regional regulations. This research uses a normative legal approach. The result of this study is that public participation is needed in the process of forming regional regulations because the community is the goal of the development itself so that active public participation can answer the needs of the community in the area.

Keywords: Establishment of Regional Regulation, Public Participation

Background

Public Participation in a democratic governance order requires public involvement in the decision-making process which is increasingly important at this time. Based on the Law of the Republic of Indonesia No. 12 of 2011 concerning the Establishment of Laws and Regulations article 96 has brought major changes in every segment of the implementation of Regional Government (Soekarwo, 2005). Most of the implementation of local government laws only prioritizes financial orientation by creating various regional regulations that emphasize economic interests rather than the interests of public services (Soekarwo, 2005).

In the process of developing regional regulations, government openness is urgently needed. With the openness of the government to the community, public participation becomes possible, both from the preparation of regulations to the promulgation of these regulations (Saragih, 2011). Forming regional regulations in order to meet the aspirations of the community must of course be balanced with the involvement of the community itself (Nugraha, 2016) that is, directly involved in the process of discussing and forming local regulations. In this process, the power is in the hands of the community itself and the Regional Legislative Council and local governments who should directly involve the community in the process, at this stage it should be discussed first or announced to the community to be able to convey their aspirations, then in the discussion process the community can provide input during the meeting.

Related to public participation in the formation of regional regulations as stipulated in Article 96 of Law Number 12 of 2011, states that:

“Public have the right to give input orally and/or written in the Making Rules”.

Furthermore, article 354 paragraph (3) letter (a) of Law Number 23 of 2014 concerning Regional Government states that:

“public participation includes the preparation of regional regulations and regional policies that can control and confine the community”

Based on Law Number 12 of 2011 concerning the Establishment of Laws and Regulations Article 96 concerning Public Participation, it is explained that: The community has the right to provide input orally and/or in writing in the formation of laws and regulations (Muhiddin, 2013; Prasetyo & Widiyati, 2017) which can be done through: public hearings, work visits, socialization, seminars, workshops, and/or discussions.

From the description above, to form regional regulations that can meet the aspirations desired by the community, of course, it must be balanced with community involvement, including: involvement in the preparation of draft regional regulations; involvement in the process of discussing local regulations; involvement in the implementation of local regulations.

With the public situation that often does not care about the process of forming laws and regulations, this can also be a benchmark where the regulations issued will not be in line with what happens in reality. This incident also caused a speculation that can be said to be a non-participatory regulation. Whereas perhaps the government and

society want to go hand in hand, but there is no initiative from both sides that gives the impression that the government and society are not in one goal (Putra, 2001)

Based on the explanation above, the researcher will examine public participation related to the process of forming regional regulations and the involvement of the Humbang Hasundutan Regency Community from a Constitutional point of view. Some of the previous studies that were used as one of the references include: Alvayedo (2019) regarding public participation in the process of forming regional regulations in South Sumatra Province. Vensky (2020) regarding public participation in the establishment of Padang city regional regulation no. 1 of 2017 concerning Public Services.

Literature Review

Overview of Regional Regulation

Article 18 Paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that the Unitary State of the Republic of Indonesia is divided into provincial areas and the province area is divided into regencies and cities. According to Law No. 23 of 2014 concerning Regional Government, Regional Regulations are Laws and Regulations that are jointly formed between the Regional People's Representative Council and Regional Heads of both Provinces and Regencies/Cities.

Regional Regulations are regulations approved by the Regional People's Representative Council (DPRD) in the context of implementing regional autonomy by regional heads. Regional Regulations are made based on laws or further elaboration to implement regional regulations and subject to other applicable laws and regulations, the regional head determines the decision of the regional head. Regency/City Code is a law established by the regency/city Regional People's Representative Council and approved by the regency/mayor, regulating the interests of the community or government structure where the regency/city government is (Manan, 2005).

Regency/City Regional Regulations are prepared by the Regency/City Regional People's Representative Council with the joint approval of the Regent/Mayor. Regent/urban regulations do not follow provincial regulations. As a form of legislation, regional regulations are part of the development of the national legal system. If supported by the right methods and standards, then good regional regulations can be applied in accordance with the technical requirements of the applicable laws and regulations as

stipulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Hanjani, 2014).

Principles of Implementation of Regional Regulations

The implementation of regional government is known as three important procedures or principles, they are the principle of decentralization, the principle of deconcentration, and assistance tasks, namely: The principle of decentralization where in Law Number 23 of 2014, the delegation of power in Article 1 Paragraph (8) of regional government is the authority of the central government to transfer government affairs to autonomous regions based on the principle of autonomy (Munir, 2013). The principle of decentralization is divided into four main forms, namely: deconcentrating, delegation to semi-autonomous or inter-regional institutions, and the transition of functions from state institutions to non-governmental organizations (NGOs) (Huda, 2012).

Procedure for Forming Regional Regulations

Article 18 Paragraph (6) of the 1945 Constitution states that Regional Regulations are the constitutional legislative rights of the Regional Government and the Regional People's Representative Council where the draft regional regulations must be jointly approved by the Regional People's Representative Council and the governor or Mayor/Regent, and further discussion of the regional regulations will not be carried out without mutual agreement. The "Draft of Regional Regulation" approved by the Regional People's Representative Council and the governor or Mayor/Regent is submitted to the governor or Mayor/Regent by the leadership of the Regional People's Representative Council and designated as a "regional regulation". From the date of the collective agreement, the draft regional regulations can be submitted no later than 7 days. The draft state regulation is determined by the governor or Mayor/Regent, but at the latest it is passed by the government as stipulated in Articles 144 (1), (2) and (3), Paragraph 144 of Law Number 32 of 2004. Within 30 days the governor or mayor/regent does not stipulate the draft regional regulations, the draft regional regulations are effectively become regional regulations and must be announced in the regional announcement. In addition, with regard to the legality of the draft local regulations, the term "official sentence" was changed to "announcing the official regional regulations" by setting the effective date of Article 145 (1).

According to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, Regional Regulations are divided into 2 parts, they are Provincial Regional Regulations and City / Regency Regional Regulations. The perda itself is included in the

hierarchy of laws and regulations in Law No. 12 of 2011, is in Article 7 point f, and the City / Regency Regional Regulation in Article 7 point g. The mechanism for preparing the Regional Regulation is divided into 4 parts, they are planning, drafting, discussing and determining. Planning Stage of Prolegda Preparation, Preparation Stage consisting of Draft Regional Regulations, Discussion, and finally at the Determination Stage.

Public Participation

According to Law Number 32 of 2004 in the Implementation of Regional Autonomy, among the participation models that can be carried out in the formation of regulations include: first, including community members who are considered experts and independents in the team or working group in the preparation of laws and regulations. Second, Conducting public hearings through seminars, workshops or inviting interested parties in meetings on the preparation of laws and regulations, deliberations on development plans. Third, conduct a validity test of local regulations. Fourth Conducting polls, public contact through the mass media. Finally, through the village community empowerment institution or forming a citizen forum.

Method

This research is a normative law research, which is research that emphasizes the object of research on laws and regulations as positive law. The emphasis of normative law research in accordance with the distinctive character of legal science lies in the study of law or the study of law on positive law, which includes three layers of law science, consisting of a study of legal dogmatics, legal theory, and legal philosophy. At the level of legal dogmatics, its study is carried out on the identification of positive laws, especially laws. Meanwhile, at the level of legal theory, a study of theories that can be used as a way to find a problem analysis. At the philosophical level, this research was conducted to understand the perceptions of regional regulations on the values of expediency, legal certainty, and legal justice that develop in society. (Suharjono, 2014). The normative law approach is used with secondary data sources, used to analyze laws and regulations, books and articles that have a correlation and are relevant to the problem under study and researchers also conduct interviews with one of the Regional Legislative Council members and the community in Humbang Hasundutan Regency.

Result and Discussion

Stages of Regional Regulation Development

In Law Number 12 of 2011 concerning the formation of laws and regulations, the stages or processes in the formation of the Law itself are explained, there are;

- **Planning Stages**

The planning stages of the Humbang Hasundutan Regency Regional Regulation based on Law Number 12 of 2011 concerning the Establishment of Laws and Regulations are as follows;

- a. Planning for the preparation of the Humbang Hasundutan Regency Regional Regulation is carried out in the Regency Regional Legislation Program. (Article 39)

Based on Article 1 number (10) of the Law on the Establishment of Laws and Regulations, Regional Legislation Program is a planning instrument for the formation of Provincial Regional Regulations or Regency/City Regional Regulations which are prepared in a planned, integrated, and systematic manner. Regional Legislation Program according to article 33 paragraph (1) is the Law on the formation of laws and regulations containing a program for the formation of Provincial / Regency Regional Regulations with the title of draft regional regulations, regulated materials, and their relationship with other laws and regulations. Regional Legislative Program plays an important role in realizing legal development in the region so that it can run well with 4 (four) components of legal development, namely the national legal system, Regional medium-term development plan, regional autonomy and assistance tasks carried out by the regions. Furthermore, the material that is regulated has gone through the study and alignment outlined in the Academic Manuscript. (Article 33 subsection (3)) The academic manuscript in question is a manuscript resulting from research or legal studies and the results of research on a certain problem that can be scientifically accounted for regarding the regulation of the problem in a draft law. Draft provincial regulations, or drafting regency/city regional regulations as a solution to the problems and legal needs of the community. The Regional Legislation Program is then compiled and then determined for a period of 1 (one) year.

- b. The preparation of a list of regional regulations draft that are part of the Regency Regional Legislation Program is based on:
 - (1) Government and higher laws and regulations;
 - (2) Regional development plan;

- (3) Implementation of regional autonomy and assistance duties; and
- (4) Public aspirations.

- Preparatory Stage

The preparatory stage for the establishment of Regency Regional Regulation based on Law Number 12 of 2011 concerning the establishment of Laws and Regulations consists of several things, there are:

- a. In the event that the draft of the Regency Regional Regulation is prepared by the Legislatives, they are the Regency Regional Legislative Council, and then the Regency Regional Regulation Draft is submitted to the Regent which will be submitted to the Governor by including a letter from the leader of the Regency Regional Legislative Council. (article 61 paragraph 1)
- b. In the Regency Regional Regulation Draft prepared by the executive, namely the Governor or related staff, the Regency Regional Regulation Draft is submitted to the leadership of the Regency Regional Legislative Council by including a letter of introduction from the Governor. (Article 61 paragraph 2)

- Discussion Stages

Based on Article 75 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, the Discussion of the Draft of Regency Regional Regulations is carried out by the Regency Regional Legislative Council with the Regent. At the discussion stage, the matters carried out based on the provisions of article 75 paragraphs (2) and (3) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations are as follows:

- a. The first level of discussion consisting of:
 - (1) Commission meeting, which is a meeting conducted by each member of the commission in the Regional Legislative Council of the Regency
 - (2) Joint meeting of the Commission, is a follow-up meeting after each commission has finished holding a meeting;
 - (3) Regional Legislation Committee Meeting, is a meeting conducted by the Regional Legislative Council of the Regency specially formed to take care of matters related to the establishment of the Draft of Regency Regional Regulation;
 - (4) Budget Committee Meeting, is a meeting conducted by the Regional Legislative Council of the Regency formed specifically to discuss the budget in the Draft of Regency Regional Regulation; and
 - (5) Special Committee Meeting, is a meeting conducted by the Regional Legislative Council of the Regency formed specifically to discuss the

establishment of the Draft of Regency Regional Regulation in the Regional Legislative Council Regency environment.

- b. Second-level Discussion, which is in a plenary meeting, which is a meeting conducted by inviting all members of the Regional Legislative Council of the Regency to discuss and make decisions with the following activities:
 - (1) Submission of a report containing the process and opinions and results of level I talks;
 - (2) A statement of agreement or a statement of rejection of each faction;
 - (3) Submission of the final opinion of the Regent or staff appointed by the Regent.
- Determination stage
The things that are carried out at the stage of determining a Regency Regional Regulation Based on Law Number 12 of 2011 concerning the Establishment of Laws and Regulations are as follows:
 - a. Draft of Regency Regional Regulation which was jointly approved by the Regional Legislative Council of the Regency and 44 in the previous discussion stage, submitted by the leadership of the Regional Legislative Council to the Governor to be designated as a Regency Regional Regulation within a period of not more than 7 (seven) days from the date of joint approval. (Article 78)
 - b. Application of the Draft of Regional Regulation in Province. The application was done by affixing the signature of the Governor within a period of not more than 30 (thirty) days from the time the draft Regency Regional Regulation is jointly approved by the Regional Legislative Council of the Regency and the Regent in the discussion stage. In the event that the draft of the Regency Regional Regulation is not signed by the Regent within a maximum period of 30 (thirty) days from the time the Regency Regional Regulation Draft is mutually approved, then the draft of the Regency Regional Regulation is valid as a Regency Regional Regulation and must be promulgated. (art. 79)
- Promulgation stage
Promulgation stage is a stage marked by the inclusion of Regency Regional Regulation into the Regional Gazette. The Regency Regional Regulation has been applied and has binding force on the date of promulgation, unless otherwise specified. (Article 87)
The promulgation of Regional Regulations in the Regional Gazette and Regional Gazette is carried out by the Regional Secretary. Laws and regulations entering

into force have binding force on the date of promulgation, unless otherwise specified in the relevant laws and regulations.

- **Publication Stage**

Publication stage of Regency Regional Regulation that have been published and carried out together with the Regency Regional Legislative Council with the Regent with the aim of providing information and obtaining input from the community and stakeholders. (Article 88 paragraph 2)

Publication is carried out to be able to provide information or obtain community ideas. Publication of Regional Legislative Program is carried out with Regional Legislative Council and The Regency Government is confirmed by the Regional Legislative Council fittings that specialize in the field of Legislation. The publication of regional regulations draft originating from the Regional Legislative Council is carried out by the Regional Legislative Council fittings. The text of the legislation publication must be a copy of the manuscript that has been promulgated in regional institutions, additional regional institutions, and regional news.

The same thing was also stated by the speaker who is a member of the Regional Legislative Council of Humbang Hasundutan Regency explained that the stages in the establishment of regional regulations in other regions are the same and even the establishment of regional regulations in the province are the same, in accordance with the Law and Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products.

Public Participation in the Establishment of Regional Regulation in Humbang Hasundutan Regency

Related to the implementation of public participation in the establishment of regional regulations, there are several things that can be done in relation, including; in the holding of Public Hearing Meetings or other meetings aimed at gaining aspirations from the community, a visit by members of the Regional Legislative Council who come directly to the community to be able to hear and receive ideas submitted by the community, or holding seminars or similar activities in order to conduct studies or following up various researches to prepare a draft for regional regulations. However, in its implementation, there are sometimes still various interpretations of who are meant by the term of community, every person or related institution, or every non-governmental organization. Community is any person in general especially a people that is "vulnerable"

to the regulation, any person or entity related, or any related nongovernmental organization.

Researchers through interviews with informants who are civil society said that in the establishment of regional regulations, the majority said that they still did not understand and did not know about the role of the community in the establishment of regional regulations and did not want or were less concerned about the process of establishing regional regulations.

However, there is one example of a form of public participation in the process of establishing regional regulations such as Regional Regulation Number 3 of 2019 concerning the Recognition and Protection of indigenous peoples of Pandumaan Sipituhuta which was later determined based on the Decree of Humbang Hasundutan Regent Number 201/2019 where the customary area was 6,186 hectares (Mongabay.id). Public participation comes from public proposals that find that the area of customary forests in the determination decision is different from the proposal decision so that the community voices aspirations by meeting with the regent on the basis of rejection of the existence of a food estate program by maintaining customary forests that have been conserved (Mongabay.id).

The results of normative research on laws and regulations related to the form of public participation in the establishment of laws and regulations show that Law Number 12 of 2011 concerning the Establishment of Laws and Regulations is clearly regulated in Chapter XI regarding public participation Article 96.

In technical regulations, especially the Ministry of Home Affairs of the Republic of Indonesia has made rules that guide the importance of public participation through the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, public participation in the process of drafting regional regulations is regulated in Article 166 formulated that the community has the right to provide input orally and / or in writing in the formation of Regional Regulation, Local Leaders Regulation, PBKHD and/or regional regulation. Ideas or innovation from the community can be conveyed through:

- a. Public Hearing;
- b. Working Visits;
- c. Socialization; and/or
- d. Seminars, workshops, and/or discussions

Table 1
Forms of Public participation in the Establishment Process of Regional Regulation

No	Bentuk Partisipasi Masyarakat	Keterangan
1	Rapat dengar pendapat Umum	-dapat dilakukan pada tahap perencanaan, penyusunan atau pembahasan -untuk mengetahui aspirasi masyarakat
2	Kunjungan Kerja	- dilakukan setiap tahapan
3	Sosialisasi	pembentukan PUU - untuk membahas materi
4	Seminar	- Untuk membahas materi
5	Lokarya	- untuk membahas materi
6	Diskusi	- untuk mempertajam materi
7	Konsultasi	- mencapai kesepakatan
8	Publik musyawarah	- dengan semua pihak sesuai
9	Kemitraan	dengan materi yang dibahas - dapat dilakukan oleh
10	Penyampaian	perseorangan/kelompok - dilakukan oleh semua pihak
11	Aspirasi	- dapat dilakukan oleh
12	Pengawasan	perseorangan/kelompok - ditujukan langsung kepada
13	Partisipasi dalam bentuk penelitian	pembentuk PUU - tulisan berupa ide, masukan atau
14	Partisipasi dalam bentuk	konsep - pada saat acara sosialisasi di tv,
15	Pengajuan usul inisiatif rancangan PUU	radio - mendukung atau menolak
16	Partisipasi masyarakat dalam bentuk masukan melalui media social	peraturan yang sedang atau sudah dibentuk - ditujukan langsung kepada
17	Partisipasi masyarakat dalam bentuk unjuk rasa	pembentuk PUU, mendukung atau menolak peraturan yang sedang atau sudah dibentuk

Source: Interview with an Informant

Constraints on Public participation in the Establishment of Regional Regulations of Humbang Hasundutan Regency

These are obstacles to the implementation of public participation in the establishment of regional regulations in Humbang Hasundutan Regency:

1. There are Pros and Cons in the community

The existence of pros and cons among the community may arise in responding to changes that occur due to the implementation of policies and The existence of pros and cons among the community ultimately also affects the participation of local communities, while public participation in the discussion of regional regulations is needed so that later the policies set are right on target or effective.

2. The long distance traveled to attend the Regional Regulation Discussion

Given the importance of the role of public participation in the process of forming regional regulations, the implementation of public participation in various forms should not experience significant obstacles.

3. Lack of Community Understanding

In the topic of forming regional regulations, public participation is very important to give their aspirations in the drafts of the Law, but most of the people do not really understand the meaning of forming regional regulations.

One of the informants said the biggest obstacle to public participation in the formation of regional regulations is that people who are less concerned and tend to close themselves because of disinterest and do not know the importance of the community's role in the process of a development. Thus, the Government provides various strategies as evaluation materials that are included in the Humbang Hasundutan Regency Government Performance Report in strategies to improve good governance, one of which is public participation in decision making and policies will be improved with the intention of good democratic development and public participation in development. However, this must be clearly outlined regarding what kind of form of participation, socialization about the importance of the role of the community in the formation of regional regulations, as well as the forum for the community to participate must be opened widely.

Table 2
Problems of Public Participation

Faktor	Problematika
Masyarakat	<ol style="list-style-type: none"> 1. Sikap apatis masyarakat. 2. Kurangnya pengetahuan dan pemahaman masyarakat. 3. Budaya paternalistis yang masih kuat mengakar. 4. Tidak ada reward (berupa tindak lanjut) partisipasi masyarakat 5. Responsibilitas masyarakat yang kurang.

<p style="text-align: center;">Yuridis</p>	<ol style="list-style-type: none"> 6. Masyarakat tidak mengetahui mekanisme penyaluran aspirasi. 7. Keterbatasan akses masyarakat informasi. 8. Kurangnya dukungan elemen masyarakat yang seharusnya membantu memberdayakan seperti : Lembaga Swadaya Masyarakat (LSM) atau media massa yang cenderung provokatif dan/atau profit oriented.
<p style="text-align: center;">Birokrasi</p>	<ol style="list-style-type: none"> 1. Banyak peraturan yang belum berpihak pada kepentingan masyarakat. 2. Belum ada peraturan yang dapat memaksa pemerintah untuk melibatkan rakyat dalam proses pembentukan perda. 3. Belum ada peraturan yang menjamin masyarakat mendapatkan informasi 4. Mudahnya melakukan korupsi kebijakan di bawah payung legalitas. 5. Adanya ketentuan partisipasi yang tidak mengikat karena tidak adanya sanksi atas pengabaianya. 6. Banyak peraturan yang menyangkut kewajiban masyarakat (ex. perda retribusi), tetapi mengabaikan hak-hak masyarakat. 7. Tidak adanya sosialisasi peraturan atau kebijakan <ol style="list-style-type: none"> 1. Sistem birokrasi yang belum memberikan ruang bagi publik. 2. Birokrasi diposisikan sebagai mesin yang hanya bekerja sesuai jalur. 3. Tidak ada keterlibatan masyarakat dalam pengambilan kebijakan dengan dalih high cost. 4. Kurang pemahannya birokrat akan makna partisipasi secara mendasar. 5. Image birokrasi yang kental dengan uang. 6. Saluran aspirasi yang kurang baik. 7. Kerap terjadi mobilitas massa untuk kepentingan politik. 8. Partai tidak mampu berperan untuk kepentingan rakyat

Source: Sirajuddin et al., 2006

Conclusion

The process of forming regional regulations starts from planning, preparation, discussion, promulgation, and publication as stated in Law Number 12 of 2011 concerning the establishment of laws and regulations. Public participation in the formation of a regional regulation can be carried out by providing input or opinions in public hearings or other similar meetings. Providing ideas to Regional People's Representative Council members during working visits, attending seminars or similar activities in order to conduct studies or following up on various research to prepare a draft for regional regulation, and public participation in public facilities planning is very important in order to create a safe, comfortable, productive and sustainable area by being built on local wisdom that prioritizes the interests of the community.

The community still feels apathetic to the process of forming Regional Regulations because of disinterest or not knowing how important the role of the community is in a process of forming Regional Regulations which can later become a reference in targeted development or policies needed by the community to overcome all problems in the regions.

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