

THE PROBLEMS OF THE FORMATTING PROCESS OF REGIONAL REGULATION OF EDUCATION IN INDONESIA

Agus Suprijanto
Dosen Universitas PGRI Semarang
agus_suprijanto56@yahoo.com

Key Words:

formation
regional
regulation,
problems

of

ABSTRACT

One of the basic needs which is the state responsibility and declared as one of the goals of national development is the implementation of education as contained in the the fourth paragraph of preamble and in Article 31 of the Constitution of 1945. Based on two provisions in the constitution mentioned above, It is seen that the government of the Republic of Indonesia since the beginning of the establishment of this country has realized the importance of education for the development of the nation, and therefore education becomes one of the main goals of development and governance throughout the territory of Indonesia. In fact, the condition of education in various regions in Indonesia is very different, even tends to occur a very large gap of education level in areas of growth centers with areas that fall into the category of remote areas. Therefore, in relation to the existence of regional autonomy, local governments should formulate regional regulations in the field of education that can optimize the potential and minimize the problem of education in their regions. Various problems faced by the local government in conducting the formation of local regulations. First, the problem of limited human resources, funds and supporting facilities in which the majority of local regulatory planners, both within the local government and DPRD, have not been able to adjust their capabilities to the demands of regional autonomy that require adequate capacity for drafting regulations. Secondly, it is a question of the power of formulating local regulations that make the draft local regulations dominated by designs originating from local governments while the legislative functions should be given to the DPRD. Thirdly, restrictions by higher legislation. In drafting local legislation, legislators and designers can not be free to set forth a provision in local regulations but must consider higher laws and regulations

INTRODUCTION

The purpose of governance as stated in the Preamble of the 1945 Constitution of the State of the Republic of Indonesia (UUD NRI 1945) is to achieve the welfare of the people, one of which is done by improving the education of the community. In order to support the achievement of these national goals, the Indonesian

government issued a policy related to the implementation of education in Indonesia in Law (UU) No. 20 of 2003 on National Education System (UU Sisdiknas).¹

As a law and regulation issued after the enactment of regional autonomy policy

¹ Emzir, *Isu-Isu Kritis Kebijakan Pendidikan Era Otonomi Daerah*, Ghalia Indonesia, Jakarta, 2010, hlm. 15.

in Indonesia, the implementation of *sisdiknas* in Indonesia by the central government then submitted its authority to all local governments at both the provincial and district / regional levels. As stated in Law no. 23 of 2014 about Regional Government (Autonomy Region Law), the implementation of education is a matter of concurrent government which is divided between the authority of central government, provincial government and district / city government. Local governments at both the provincial and district / municipality levels based on the Law on Regional Autonomy have the authority to determine policies related to the implementation of education in Indonesia..

In fact, the implementation of national education in every region until now is still far from the achievement of its goal, that is to improve the quality of education and quality of Human Resources from all Indonesian people. This has been reported in a research report released by the United Nations of Educational, Scientific and Cultural Organization (UNESCO) in 2016 which states that there is a huge discrepancy in the quality of education in Indonesia, especially in areas that are very far from the center of government.² While the results of the previous year's study released by The Organization for Economic Co-operation and Development (OECD) in 2015 stated that education utilities in Indonesia are ranked 69 out of 76 countries that are members of the OECD, which indicates the low quality of education in Indonesia Compared to other countries in the world.³

The occurrence of the quality gap and the quality of education in Indonesia between regions far from the central

government and the area around the center of activity is basically caused by various factors, but one that is very influential on this issue is the education policy that can not optimally support Education in the region. The local government, as regulated in the Regional Autonomy Law, has full authority to develop a policy package in the field of education to address various issues in the implementation of education in the region. Therefore, the ability of stakeholders to establish local regulations in the area of both local government capability and the ability of local parliaments plays an important role in ensuring that the policy of the implementation of education in the region can encourage the achievement of national development goals that is the creation of intelligent and qualified Indonesian human resources.⁴

As the basis for the implementation of education in the regions, the regional education regulation plays an important role in determining how an education system will be organized in the regions of Indonesia. The problems in the achievement of national education objectives as previously described leads the researcher to conduct an in-depth study of the problems faced in the process of establishing regional regulations in the regions in Indonesia. To be able to conduct a thorough but solid study, the researcher tries to summarize the entire study study which discusses the problematic of formation of local regulation in Indonesia and various study related problems in the implementation of education in Indonesia.

DISCUSSION

The formation of a regional regulation is a legal process based on Law No. 12 of 2011 on the Establishment of Local Legal Products can be implemented on the proposal of the local government as well as from the local Regional House of

² UNESCO, *Global Education Monitoring (GEM) Report 2016*, Jakarta: Komisi Nasional Indonesia untuk UNESCO, 2016.

³ The Organization for Economic Co-operation and Development, *Programme for International Student Assessment (PISA) Report*, Paris: OECD Publishing, 2015, hlm. 8-9.

⁴ Sirajuddin, *Teknik Pembuatan Peraturan Daerah di era otonomi daerah*, In-Trans, Malang, 2005, hlm. 46.

Representatives (Dewan Perwakilan Rakyat Daerah / DPRD). Researchers have conducted in-depth study of various studies related to the problems in the formation of local regulations, especially in the field of education that occurred in Indonesia. In general, based on these studies, there are three main problems that become problematic in the formation of local regulations in Indonesia, among others:

a. Problems of Human Resources Limitations, Funds and Supporting Facilities for the Formation of Local Regulations

Limited human resources in general is not caused by lack of quantity, but less in terms of quality relating to tasks related to the field of law. The presence of Law no. 32 of 2004 which was further amended by Law no. 23 Year 2014 on Local Government is a factor causing widespread social, economic, cultural and political changes in the region.⁵ Through both laws the Autonomous Region has been and will be given wide, real and responsible authority, accompanied by the provision of significant financial resources in accordance with its authority. The pattern used is "money follows function".

Under the law as well as various other implementing regulations, there will be greater concentration of decision-making and money-circulation in autonomous regions, especially districts. With broader authority, autonomous regions have greater discretion to determine their own future based on their needs and capabilities in the union of the Unitary Republic of Indonesia (NKRI). With the increasing amount of money circulating in the regions, it is expected to accelerate the process of development and even distribution of the results in the regions, if local communities can take advantage of opportunities. If not, then

others who are more prepared will take advantage of these opportunities.

It is known that the quality of human resources related to the formation of local regulations is still not maximized, so the human resources that become the support is only academics, which in this case as the academic script maker of local regulation draft. In fact, as stipulated in the Explanation of Law No.12 of 2011 stated that "To support the formulation of legislation, it is necessary role of policy designer drafters as qualified functional personnel and who have the task of preparing, processing, and formulating draft laws and regulations ". Furthermore, Article 2 of the Presidential Regulation (Perpres) no. 37 of 2006 concerning Functional Job Allowance The Legislation Designer states that to the Civil Servant who is appointed and fully assigned in the Functional Position of the Legislative Designer, is granted a monthly Regulatory Design Substitution allowance. The problem is, the existence of the drafting force of the Local Regulations which is none other than the staff of the Legal Division is basically inconsistent with Article 2 of Presidential Regulation no. 37 of 2006 in accordance with Article 2, they should be specifically and full time appointed by the regional head to occupy functional positions as designers of local regulations.

In fact, the so-called legal drafter by the Legal Department is none other than the Legal Department staff who have been involved in drafting the Raperda. Thus, the drafters of the Local Regulations are not functional designers as regulated by Presidential Regulation no. 37 of 2006.⁶ Meanwhile, if viewed from the side of the ability of members of local parliament, many parties who doubted the ability of human resources board members in drafting the Regional Regulations. Admittedly, the representation of the

⁵ Maria Farida Indriati Soeprapto, "Proses Pembentukan Peraturan Perundang-undangan Pasca Amandemen UUD1945", Majalah Hukum Nasional, Nomor 1, Jakarta, 2005, hlm. 98.

⁶ Alexander Abe dalam Siswanto Sunarno, *Hukum Pemerintahan Daerah di Indonesia*, Sinar Grafika Offset, Jakarta, 2008, hlm. 37.

community reflected in the elected council members is not due to the HR factor alone, but because of the influence that is supported by the financial and capital capabilities it has. Therefore, the community can not expect much on the ability of the members of the council, especially in its ability to draft the Regional Regulation. Members of the local parliament are not well prepared in drafting local regulations, the representation of local parliament members complies more with political requirements alone and overrides the formal requirements of intellectuals and government.

The next limitation is related to the availability of funds to carry out the process of forming a perda based on Law no. 12 of 2011 and Permendagri no. 80 Year 2015 is a very long process and requires the active participation of all education stakeholders in the region. As stated by Habermas, an effective and enforceable legal rule in society will be established when communities can be actively involved in the process of formation.⁷ Meanwhile, to be able to pursue full community participation in the process of local regulation requires a lot of cost while the concentration of each region is not only focused to carry out education only. The low level of availability of funds makes the process of forming perda can not bring full participation of the community, while with low participation level, the community input related problems in the implementation of education in the region also become low. Due to the low inputs associated with the problems in the implementation of the education, many regional regulations on regional regulations that can not be effectively implemented in the community, and even many local regulations that create new problems such as not in accordance

with the public interest and even discriminatory which led to be revoked.

Supporting facilities in the process of forming perda more attributed to the information media that can connect the initiator of local regulations with the community. Related to this, in accordance with the existing technological developments, the community expects a lot of convenience for them to be able to access information as widely as possible about the process of formation of the local regulations on education. The problem is that almost all regions in Indonesia do not have a viable information system and are able to continue to update information on the local regulatory process that occurs, let alone to provide an easy access for the community to communicate with local education initiators in the region. The low capacity of supporting facilities to facilitate public access to the formation process of the local regulation also makes the educational regulations that are formulated to be less participatory and ultimately can not be implemented in the community effectively.

b. Problematics of the Authority for the Establishment of Regional Regulations More dominated by the Regional Government

Referring to the Indonesian government system, the Local Parliament as a representative of the people in the region is an institution with the function of legislators which means a major role in the formation of a product of local law. In fact, to date due to the limitations in terms of organizational structure and the devices it possesses, the role of Local Parliament in the formation of local regulations is still very minimal and therefore many local regulations in Indonesia are proposals from local governments.⁸

There is no basics standard on the Local Parliament's performance measures

⁷ F. Budi Hardiman, *Demokrasi Deliberatif: Menimbang Negara Hukum dan Ruang Publik dalam Teori Diskursus Jurgen Habermas*, Kanisius, Yogyakarta, 2009, hlm. 5.

⁸ Ishak, *Posisi Politik Masyarakat Dalam Era Otonomi Daerah*, Wedatama Widya Sastra, Bandung, 2014, hlm. 23.

in implementing one of its duties and functions, namely the function of legislation. Where legislation itself is a political product that becomes the policy choice in determining the direction of the problem if it is already in the form of Local Regulations. Enri Setiowati in his research mentioned the legislation as a legal document binding public and institution of a State. Thus the important role of legislation is in order to create patterns within the community, both patterns / systems that will be good or vice versa.⁹ A good legislation is capable of reading the changes that will take place, the legislation should be responsible to the demands of society. Because of the society that will be subjected to the arrangement, however the spirit must be in accordance with the will of the people.

According to A. Charisudin in his paper entitled *Problematika DPRD in the preparation of the Regional Regulation*, the performance indicators of DPRD in the implementation of the legislative function can be seen from 2 (two) things: Productivity in drafting the draft of local regulations and public involvement especially those affected by the regulations that are scheduled. Productivity concerns the DPRD's response to the legal needs of the community which is then manifested in the form of draft local draft legislation which is the initiative of the DPRD and the involvement of the public regarding the contents of the draft Local Regulation that should not harm the community but must be able to guarantee the fulfillment of community rights.¹⁰

⁹ Enri Setiowati, *Peranan dan Fungsi Legislasi Dewan Perwakilan Rakyat Daerah dalam pembentukan Perda Partisipatif di Indonesia*, Jurnal Hukum Tata Negara, Vol. 2, No. 4, 2015, hlm. 87-102.

¹⁰ A.Charissuddin, *Problematika DPRD dalam penyusunan Peraturan Daerah*, makalah pada Temu Konsultasi Penyusunan Program Legislasi Daerah, diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, Bali 13-15 September 2005

Both studies reveal that the ability of the DPRD in drafting a proposed Raperda (including education) is still very low, this is mostly associated with the quality of human resources of members of the DPRD itself is very little background of legal education as a legislator then it should be every member of the DPRD Has a legal education background to be able to support its performance in forming a legal product in the region.

c. Related Problems Harmonization of Laws that Restrict Local Regulations to Comply with Higher Rules of Law

Harmonization is a principle in the formulation of legislation in which all laws and regulations established must always be in accordance and in sync with the existing laws above it. This regulatory conformity between hierarchies is required to ensure order in all lower level legislation which is an implementing regulation, so that the rule of law that is referred to is usually a regulation on a national scale that is set to achieve the goal of national development that is community welfare.¹¹

As an implementative regulation in the regions, local regulations must also contain provisions that are harmonious and in sync with any existing laws above them. In relation to regional regulations on education, the existing regional regulations on education in Indonesia must be harmonious with the laws and regulations which contain national education system as well as the principles of legal regulation in the regions.

In fact, many local regulations in Indonesia are proven to be incapable of accommodating the harmonization principles of these laws. In the year 2016 The Ministry of Internal Affairs has revoked as many as 3,143 perda that are considered not in accordance with the above laws, including in it there are

¹¹ Akmal Boedianto, *Hukum Pemerintahan Daerah, Pembentukan Perda APBD Partisipatif*, CV Putra Media Nusantara, Surabaya, 2010, hlm. 62.

regional regulations on education in Indonesia.

The content of the Regional Regulations has been clearly regulated in Law No.12 / 2011 and Law No.23 / 2014. Article 12 of Law No.12 / 2011 stipulates that the content of Regional Regulations shall be all material content in the context of the implementation of regional autonomy and assistance tasks, and shall accommodate the special conditions of the regions as well as further elaboration of the higher laws and regulations. Article 5 of Law No.12 / 2011 determines that the law should consider the principles of the content of PUU, including the principles of balance, harmony and harmony, and most importantly the provisions of Article 7 paragraph (4) and paragraph (5) of Law No.12 / 2011 jo Article 136 paragraph (4) of Law No.23 / 2014 that the matter of law is prohibited against the public interest and / or higher legislation.

Harmonization of legislation is a process directed towards violence and harmony between one regulation and another regulation so that there is no overlap, inconsistency or conflict / disagreement in the arrangement. In relation to the principle system of the legislation's hierarchy as described earlier, the process includes the harmonization of all regulations including local regulations both vertically and horizontally.

In Law No.12 Year 2011 there are signs that lead to the importance of harmonization of legislation for all types of regulation including local regulation. Article 5 determines that a regulation is considered good if it meets the principles of good legislation such as clarity of purpose, suitability between the type and material content, workability, usability and effectiveness, and clarity of formulation; Article 7 on the type and hierarchy of legislation; Article 6 on the principles of legislation, Article 12 on the content material of Local Regulations and Article 15 on Regional Legislation Program.

The harmonization process requires precision, accuracy, and accuracy in identifying related regulations, analyzes of conforming or contradictory norms, and accuracy in determining legal political options in case of incompatibility of draft conceptions with other regulation provisions. In the process it is necessary to ensure that the principles of regulation must be firmly adhered to by the authors, for example, that the regulation plan is made to implement the law, the regulation plan can not regulate anything that exceeds the mandate of the Act.

In the framework of harmonization of Local Regulations and any other types of regulation, the harmonization process of local regulation with other regulations and with other regional regulations need to be integrated since the discussion of Regional Legislation Program and the preparation of Academic Paper. This is a problem in the majority of local regulations problem in Indonesia. The very low ability to organize Regional Legislation Program and also to draft academic manuscripts from stakeholder formation of local regulation causes many local regulations whose contents are in conflict with regulations above it. As a result of the harmonization of the local education regulation, the regulation has to be revoked, and therefore the implementation of education in the regions is not optimal so that the achievement of the objectives to improve the quality of education as well as the human resources of the community in the region is also hampered.

CONCLUSION

The formation of local regulations in the field of education in Indonesia is still considered not optimal, this causes the implementation of education in the region as a manifestation of the implementation of regional autonomy is not maximal. Evidence of the weakness of the implementation of education in the region is the gap in quality and quality of education between regions in the central

area of activity with areas that are far from the center of activity. Problems related to the ineffectiveness of the process of formation of regional regulations in the field of education in Indonesia can be categorized into three main issues, among others: 1) limited human resources, funds and means of supporting the formation of local regulations, 2) the process of forming local regulations that more dominated by local government, and 3) harmonization of law Which is very low in the formation of regional regulations on education.

Human resources are the brains of the implementation of each activity, hence limitations in the adequacy of human resource quality in implementing the formation of regional regulations in education will result in the formation of a local regulation that can not accommodate the settlement of problems of education in the region, as well as the limited funds as well as the means of supporting the process The formation of local regulations. Meanwhile, the process of forming a local regulations is actually the authority of the legislator in this case is the authority of the local parliaments. However, due to limitations in the structural aspects, the completeness and resources of the local parliaments are lower than those of regional governments, many of the regional regulations on education are proposed by local governments and are therefore discussed within the scope of local government. The latter problem is related to the very low harmonization of all local regulations in Indonesia which has caused many local regulations to be revoked, including regional regulations on education. The low ability to carry out regional legislation program and drafting academic texts is the cause of the unlawfulness of the content of the local education regulation with the higher regulations, and hence the regional regulations must be revoked so that the implementation of education is hampered.

REFERENCES

- A.Charissuddin. 2005. Problematika DPRD dalam penyusunan Peraturan Daerah. *Makalah pada Temu Konsultasi Penyusunan Program Legislasi Daerah, diselenggarakan oleh Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, Bali 13-15 September 2005.*
- Abe, Alexander. 2005. *Perencanaan Daerah Partisipatif*. Yogyakarta: Pembaharuan.
- Akmal Boedianto. 2010. *Hukum Pemerintahan Daerah, Pembentukan Perda APBD Partisipasif*. Surabaya : CV Putra Media Nusantara.
- Emzir, dkk. 2010. *Isu-Isu Kritis Kebijakan Pendidikan Era Otonomi Daerah*. Jakarta: Ghalia Indonesia.
- Enri Setiowati. 2015. Peranan dan Fungsi Legislasi Dewan Perwakilan Rakyat Daerah dalam pembentukan Perda Partisipatif di Indonesia. *Jurnal Hukum Tata Negara, Vol. 2, No. 4, 2015, hlm. 87-102.*
- F. Budi Hardiman. 2009. *Demokrasi Deliberatif: Menimbang Negara Hukum dan Ruang Publik dalam Teori Diskursus Jurgen Habermas*. Yogyakarta : Kanisius.
- Maria Farida Indriati Soeprapto. 2005. *Proses Pembentukan Peraturan Perundang-undangan Pasca Amandemen UUD1945*. Majalah Hukum Nasional , Nomor 1, Jakarta, 2005.
- Sirajuddin. 2005. *Teknik Pembuatan Peraturan Daerah di era otonomi daerah*, In-Trans, Malang.
- The Organization for Economic Co-operation and Development. 2015. *Programme for International Student Assesement (PISA) Report*, Paris: OECD Publishing.
- United Nations Edutacional Scientific and Cultural Organization. 2016. *Global Education Monitoring (GEM) Report 2016*. Jakarta:

Komisi Nasional Indonesia untuk
UNESCO.

Undang-Undang (UU) Nomor 23 Tahun
2014 jo Undang-Undang (UU)
Nomor 9 Tahun 2015 tentang
Pemerintahan Daerah

Undang-Undang Republik Indonesia
Nomor 12 tahun 2011 tentang
Pembentukan Peraturan Perundang-
Undangan

Undang-Undang (UU) Nomor 20 Tahun
2003 tentang Sistem Pendidikan
Nasional

Peraturan Menteri Dalam Negeri
(Permendagri) Nomor 80 Tahun
2015 tentang Pembentukan Produk
Hukum Daerah