

IMPLEMENTATION OF ARTICLE 88 REGULATION OF THE MINISTER OF HOME AFFAIRS NUMBER 120 OF 2018 CONCERNING AMENDMENT TO REGULATION OF THE MINISTER OF HOME AFFAIRS NUMBER 80 OF 2015 CONCERNING ESTABLISHMENT OF LOCAL LEGAL PRODUCTS

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Abstract

Based on the provisions of Article 88 paragraph (2) Permendagri 120/2018 jo. Permendagri 80/2015 Raperda after discussion must be facilitated. Facilitation is an act of coaching carried out by the Minister of Home Affairs to the Regional Government. Facilitation is carried out to minimize the cancellation of regional regulations. How is the implementation and the inhibiting factors for the implementation of Article 88 paragraph (2) Permendagri 120/2018 jo. Permendagri 80/2015. Inhibiting factors: lack of socialization related to the mechanism for facilitating draft local regulations, limited number of drafting staff of laws and regulations, discrepancy between the number of regional legal product drafts with the time limit set by law, and the low quality of the proposed draft regional regulations for facilitation. Thus, it is necessary to pay attention to the facilitation mechanism in the formation of legal products and add qualified drafters of statutory regulations.

Keywords: *Facilitation, Legal Products, Mechanisms for Forming Legal Products.*

I. INTRODUCTION

Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) stipulates that the State of Indonesia is a people-sovereign country which reflects that Indonesia is a democratic country because it involves its people in making policies. Indonesia as a constitutional state has an obligation to carry out all aspects of national and state life based on laws that are in harmony with the Indonesian national legal system. Indonesia's national legal system is a combination of several legal elements that are mutually sustainable to overcome problems that occur in the life of the nation and state, from the smallest scope, namely the village to the largest scope, namely the state. In order to regulate society and organize the general welfare of all the people, the government issues various kinds of laws and regulations issued by the government that must be based on the 1945 Constitution and Pancasila. The formation of laws and regulations is part of the whole process of forming new laws in carrying out state duties and public

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services to the community in accordance with the general principles of good governance.³

The process of forming laws and regulations is a translation product of public policy which is poured into a normative language structure in the midst of a democratic society based on the rule of law. As stated in Pasal 18 paragraph (2) of the 1945 Constitution that the Provincial, Regency and Municipal Governments regulate and manage their own government affairs according to the principles of autonomy and co-administration.

In the formation of laws and regulations, the stages that must be passed by the organs forming statutory regulations have been determined so that the resulting laws and regulations fulfill the formal aspect. . The planning stage is the initial stage of the process of establishing laws and regulations. As mandated in the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products (Permendagri 80/2015) in guaranteeing legal certainty for the formation of Regional Legal Products, guidelines are needed based on definite, standard and standard methods and methods so that they do not conflict with statutory regulations. - higher law, public interest and/or decency.

After going through the planning stages through the Propemperda, a discussion was held on the draft regional regulation. Based on the provisions of Article 88 paragraph (2) Permendagri 120/2018 jo Permendagri 80/2015, the draft regional regulation must be facilitated after discussion. Facilitation itself is an act of coaching in the form of providing guidelines and technical instructions, directions, technical guidance, supervision, assistance and cooperation as well as monitoring and evaluation carried out by the Minister of Home Affairs to the Province and the Minister of Home Affairs and/or the Governor to the Regency/City regarding the design content material regional legal products in the form of regulations before they are enacted in order to avoid cancellation. Facilitation of draft regional regulations is carried out on draft regional regulations that are formed so that they do not conflict with provisions of higher laws and regulations, public interest, decency and do not hinder investment in the region.

II. DISCUSSION

Implementation of Article 88 paragraph (2) of the Minister of Home Affairs Regulation Number 120 of 2018 concerning Amendments to the Minister of Home Affairs Regulation Number 80 of 2015 concerning Formation of Legal Products

Based on the results of an interview with Mrs. Sri Endang Purnama, SH, as the Drafter of Laws and Regulations Young Expert for the Government of Lampung Province, the formation of regional legal products is the making of regional laws and

³Hartono. 2012. *Pengkajian dan Penelitian Hukum dalam Menunjang Pembentukan Peraturan Perundang-Undangan di Daerah*. Makalah, Bogor

regulations which include the stages of planning, drafting, discussing, validating or stipulating, enacting, and disseminating .

It is further explained that regional legal products can take the form of regulations or decisions. Regulations include regional regulations or other names, regional regulations, PB KDH, DPRD regulations, while decisions include regional head decisions, DPRD decisions, DPRD leadership decisions, and DPRD honorary body decisions.

As a guide and reference in the implementation of quality regional law products in community life, in this case the regional regulations of Lampung Province are interpreted as legal products that are materially and technically drafted in accordance with statutory provisions. Thus, this legal product can solve problems in an appropriate manner, answer the needs of the community, and be of benefit to the community. Besides that, an orderly understanding of regulations is needed by the shapers of regional legal products. This is motivated by the many regional legal products that are inconsistent both in terms of authority, procedure, substance and implementation of higher laws and regulations. So, with an orderly understanding of regulations, it is hoped that this will be able to reduce the number of cancellations of legal products in the regions.

Sri Endang Purnama, SH. explained that in order to minimize the cancellation of draft regional regulations, it is necessary to pay attention to the mechanism for the formation of these regional legal products. The mechanism for forming a regional regulation draft in Lampung Province begins with the stages of planning, drafting, discussing, ratifying or enacting, and enacting.

With regard to the mechanism for forming regional regulations, it was explained in an interview with the Head of the Sub-Coordinator for Drafting Legislation of the DPRD Secretariat for Lampung Province, Mr. Windra Yulidon Usman, SE., MM. According to him, at the planning stage Propemperda was formed which contained a program containing the title of the draft regional regulation, regulated material (stated in academic texts), and linkages with other laws and regulations (stated in academic texts). In addition, the preparation of the priority list in Propemperda is based on orders from higher laws and regulations, regional development plans, implementation of regional autonomy and co-administration tasks, and community aspirations.

After going through the planning stages, followed by the drafting stages, draft regional regulations can come from the DPRD or the Governor. For draft regulations originating from the Lampung Provincial DPRD, harmonization, unification and consolidation of the conception are carried out coordinated by the Regional Regulation Formation Agency (Bapemperda) DPRD Province of Lampung. As for the draft regulations originating from the Executive, the harmonization, unification and consolidation of the conception will be coordinated by the Legal Bureau of the Regional Secretariat of Lampung Province.

After the draft regional regulation has been prepared and has gone through a process of harmonization, unification and consolidation of the conception, then the draft regional regulation is submitted through the plenary session of the DPRD. If during one session it turns out that the DPRD and the Governor submit a draft regional regulation regarding the same material, then what is discussed is the draft regional regulation submitted by the DPRD and the draft regional regulation submitted by the Governor used as material for comparison. In the plenary meeting of the Lampung Province DPRD, it was approved which draft regional regulations would be discussed at the discussion stage.

During the discussion stage of the regional regulation draft, the discussion was carried out jointly between the Lampung Province DPRD and the Governor of Lampung. The discussion is carried out through stages of discussion such as in Commission or Special Committee meetings or Bapemperda DPRD Lampung Province.

The process of joint discussion of the regional regulation draft between the Lampung Provincial DPRD and the Governor of Lampung is aimed at achieving mutual agreement between the two institutions and officials forming the regional regulation. After a joint agreement between the Lampung Province DPRD and the Governor of Lampung regarding the draft regional regulation that was discussed, the Ministry of Home Affairs facilitated it.

Facilitation was carried out on draft regional regulations which were not evaluated and were carried out after the Level I DPRD Talks. However, according to Mr. Windra Yulidon Usman's statement, so far the facilitation has been carried out after the Level II Discussion of the Lampung Provincial DPRD or after obtaining approval from the DPRD.

Based on an interview with Mrs. Rincih Rustiana, S.Sos., M.Sc., Young Expert Legal Analysis, Sub-Coordinator of Region IB Directorate General of Regional Legal Products, Ministry of Home Affairs, facilitation of regional legal products including regional regulations is mandatory. This refers to the provisions of Article 88 paragraph (2) Permendagri 120/2018 in conjunction with Permendagri 80/2015.

Facilitation was carried out on the draft regional regulations that were not evaluated, namely the draft regional regulations concerning the RPJPD, RPJMD, Pure APBD, Accountability and Amendment, Regional Taxes and Levies, Spatial Plans and RDTR as well as draft regional regulations regarding Villages. Facilitation itself is an act of coaching in the form of providing guidelines and technical instructions, directions, technical guidance, supervision, assistance and cooperation as well as monitoring and evaluation carried out by the Minister of Home Affairs to the Province and the Minister of Home Affairs and/or the Governor to the Regency/City regarding the design content material regional legal products in the form of regulations before they are enacted in order to avoid cancellation.

It was further explained that the implementation of facilitation of the draft regional regulation was formed so that it does not conflict with the provisions of higher laws and regulations, public interest, decency and does not hinder investment in the region.

The implementation of the facilitation of draft regional regulations in forming quality regional regulations is associated with Lawrence M. Friedman's legal system theory which states that law is best understood as a system, namely a system consisting of three elements, namely structure, substance, and culture.

The legal structure is defined as a set of institutions created within the framework of the existing system to encourage the working of the legal system itself. In simple terms, the legal system concerns human resources in an institution. The mechanism for forming quality regional regulations in the DPRD of Lampung Province is related to the main tasks of Bapemperda, the Legislation Section, the Session Section and the DPRD's Complementary Instruments as proponents.

As for the existing human resources as a whole, the Lampung Provincial DPRD Secretariat as a supporter of the Lampung Provincial DPRD only has 2 (two) functional persons drafting laws and regulations. The DPRD of Lampung Province has also appointed experts or a group of experts who can assist in deliberating the draft regional regulation. In addition, in terms of discussing the draft regional regulation, human resource support was also obtained from the Regional Office of the Ministry of Law and Human Rights in Lampung. For experts and functional staff drafting laws and regulations from the Regional Office of the Ministry of Law and Human Rights in Lampung, they are tentative in nature, not directly attached to the organization of the Secretariat of the DPRD Province of Lampung Province.

Furthermore, legal substance is defined as substance, product (output) from the operation of the legal system. The correlation between legal structure and legal substance in the mechanism for forming regional regulations by the DPRD of Lampung Province is that limited human resources in deliberating draft regional regulations hinders the mechanism for forming regional legal products. This correlation is clearly seen from the output or regional legal products produced. Where based on the results of facilitation by the Ministry of Home Affairs there were draft regional regulations that were canceled and could not be implemented in the regions.

Meanwhile, legal culture is the values or overall social power and overall legal power which are used as input to a process of the operation of a structure and as a binder for the operation of that structure. formed, implemented, and functioned to achieve goals.

Culture or legal culture is the relationship between social behavior and its relation to law or concerning the behavior or actions of the legal structure. If it is associated with the mechanism for the formation of quality regional legal products, that legal culture is the relationship between social behavior and its relation to law.

Legal culture is closely related to the behavior of supporting resources for drafting regional regulations, where human resources do not yet know about the implementation of facilitation of regional regulations that must be carried out after the Level I Deliberations. Because they do not know about the changes to these regulations, the facilitation continues to use the old mechanism.

Based on the description above, it can be analyzed that the implementation of Article 88 paragraph (2) Permendagri 120/2018 jo. Permendagri 80/2015 concerning Formation of Regional Legal Products has been implemented and is in accordance with the theory of the Legal System put forward by Lawrence M. Friedman but the implementation has not been maximized because there are still several obstacles. The obstacles experienced include the lack of socialization of the facilitation mechanism and the limited staff for drafting laws and regulations so that the discussion and review of draft regional regulations takes a long time.

Obstacle Factors in the Implementation of Article 88 paragraph (2) of the Minister of Home Affairs Regulation Number 120 of 2018 concerning Amendments to the Minister of Home Affairs Regulation Number 80 of 2015 concerning Formation of Legal Products

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The inhibiting factor in the formation of quality local law products is associated with the policy theory put forward by Thomas R Dye. Where Thomas R Dye defines public policy as "is whatever the government chooses to do or not to do", which means whatever the government chooses to do or not to do. This definition emphasizes that public policy is about the embodiment of "actions" and is not merely a statement of the will of the government or public officials. In addition, the government's choice not to do something is also a public policy because it has the same influence or impact as the government's choice to do something.

In forming regional legal products, Lampung Province has implemented the provisions of Article 88 paragraph (2) Permendagri 120/2018, where for draft regional regulations that are not evaluated, facilitation is carried out. Facilitation is a form of written guidance on regional law products, regulation of drafting techniques and content materials. Facilitation of draft regional regulations, draft regional regulations and draft DPRD regulations is mandatory, and this stage has been carried out by the Province of Lampung.

Facilitation of the draft regional regulation is carried out after the level I discussions have been completed, and is evidenced by the Minutes. The letter of request for facilitation is accompanied by documents on draft regional regulations, draft regional regulations, and/or draft DPRD regulations in hardcopy form and Minutes of Level I discussions for facilitation of draft regional regulations.

Based on an interview with Mr. Windra Yulidon Usman, SE., MM., as the Coordinator of the Drafting of Laws and Regulations of the DPRD Secretariat of Lampung Province, the facilitation process has indeed been carried out by the Lampung Provincial Government, but the stages are carried out after Level II Discussions or after obtaining approval from the DPRD and Governor. So that when there is a result of improvement as a result of facilitation, the discussion is no longer carried out by the Special Committee.

Another thing that was done by the Provincial Government of Lampung in order to apply for facilitation was to carry out an in-depth study of the material content of the draft regional regulation or regional head regulation. The study was carried out by involving experts, functional staff drafting laws and regulations and involving drafters from the Regional Office of the Ministry of Law and Human Rights in Lampung.

Some of the things that were criticized in the process of facilitating the draft regional regulations or things that had not been implemented by the Regional Government of Lampung Province were that requests for evaluation, especially facilitation of regional regulations or regional head regulations, were not proportional to the time limit specified in the statutory regulations. For example, the request for facilitation of the Lampung Province regional regulation draft in December 2021 totaled 7 (seven) regional regulation drafts. Where facilitation must be completed within a time limit of 15 (fifteen) working days. This of course makes the results of facilitation ineffective.

Another thing that has not been done is the low quality of the draft regional regulations submitted for facilitation. The draft regional regulation draft has indeed gone through discussion and review, but sometimes the results of the study are still not optimal, including the formulation of preambles to the non-delegate regional regulation draft which has not yet described philosophical, sociological and juridical elements. Apart from that, the formulation of the preamble of regional regulations is not delegation, there is writing of words or terms that have been defined

inconsistently in the regulated norms and there is a discrepancy in the types, hierarchies and contents of regional regulations.

Based on the description above, it can be analyzed that the inhibiting factors in the implementation of Article 88 paragraph (2) Permendagri 120/2018 for the formation of quality regional legal products are the lack of socialization related to the mechanism for facilitating regional regulation drafts, discrepancies in the number of draft regional legal products with limits the time stipulated by law, as well as the low quality of the draft regional regulations submitted for facilitation.

III. CONCLUSION

Based on the explanation and analysis that the author described above, several conclusions can be put forward that the provisions of Article 88 paragraph (2) Permendagri 120/2018 concerning the Formation of Regional Legal Products have been implemented by the Provincial Government of Lampung but have not been maximized due to several inhibiting factors. The inhibiting factor for the implementation of Article 88 paragraph (2) Permendagri 120/2018 jo Permendagri 80/2015 in the formation of quality regional legal products is the lack of socialization related to the facilitation mechanism for draft regional regulations, discrepancies in the number of draft regional legal products with the time limit set by law and the low quality of draft regional regulations submitted for facilitation.

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