

## Legal Politics of The Formation of Regional Regulations Based on Positive Law

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### Abstract

The title of this research is the legal politics of the formation of regional regulations based on positive law. The formulation of problem is how the legal politics of the formation of regional regulations based on positive law in Indonesia? The methods of the research: first, the type of research is normative, second, the approach used is a legal approach and is complemented by a political approach, third, the legal materials used are primary and secondary legal materials, and fourth, the method of analysis is a qualitative juridical analysis. The results of the research indicate that the legal politics of the formation of regional regulations is part or a sub-system of the legal politics of the formation of national legislation (national law). The legal politics of the formation of regional regulations is not only bound and guided by the basis of state philosophy, theory, Unitary form of state, principles, content material, statutory regulations, but can also contain material on the implementation of regional autonomy, co-administration tasks, further elaboration, provisions of higher laws and regulations. Furthermore, it may also contain local content material in accordance with the provisions of laws and regulations. In addition, the legal politics of the formation of regional regulations seeks to strengthen the unitary state and actualize regional regulations that are aspirational, responsive, accountable, efficient, effective and functional.

**Keywords:** legal politics, formation, regional regulations.

### Abstrak

*Judul penelitian ini adalah politik hukum pembentukan peraturan daerah berdasarkan hukum positif. Rumusan masalahnya adalah bagaimana politik hukum pembentukan peraturan daerah berdasarkan hukum positif di Indonesia. Metode penelitian: pertama, jenis penelitian bersifat normatif, kedua, pendekatan yang digunakan adalah pendekatan hukum dan dilengkapi dengan pendekatan politik, ketiga, bahan hukum yang digunakan adalah bahan hukum primer dan sekunder, dan keempat, metode analisis adalah analisis yuridis kualitatif. Hasil penelitian menunjukkan bahwa politik hukum pembentukan peraturan daerah merupakan bagian atau sub-sistem dari politik hukum pembentukan undang-undang nasional (hukum nasional). Politik hukum pembentukan peraturan daerah tidak hanya terikat dan berpedoman pada dasar filsafat negara, teori, Kesatuan bentuk negara, prinsip, materi isi, peraturan perundang-undangan, tetapi juga dapat memuat materi tentang pelaksanaan otonomi daerah, tugas administrasi bersama, penjabaran lebih lanjut, ketentuan peraturan perundang-undangan yang lebih tinggi. Selain itu, juga dapat berisi materi konten lokal sesuai dengan ketentuan peraturan perundang-undangan. Selain itu, politik hukum pembentukan peraturan daerah berupaya memperkuat negara kesatuan dan mengaktualisasikan peraturan daerah yang aspiratif, responsif, akuntabel, efisien, efektif dan fungsional.*

**Kata kunci:** politik hukum; pembentukan; peraturan daerah.

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## Introduction

The legal politics of forming regional regulations is a sub-system of the legal politics of developing national laws. This means that regional legal products, especially regional codes, are an addition to being bound and guided by the state's fundamental values, philosophy, theory, principles and norms, which are also tied to the legal, and political system that applies nationally. Such a paradigm is a *condise sine quanon* with the form or structure of a unitary state as regulated in

Article 1 Paragraph (1) in conjunction with Article 18 of the 1945 Constitution of the Republic of Indonesia. Such a systemic way of thinking is often forgotten by the Regional Government, *DPRD*, and the regional device. Especially with the current multi-party system tends to misinterpret the essence of democracy and regional autonomy with excessive freedom, namely freedom that is no longer rooted in and guided by the paradigm of law, democracy, and a unitary state.

Indications of such erroneous thoughts and attitudes often arise in practice; for example, when the President, Governor, Regent, Mayor, and *DPRD* Chair each come from different parties, there is not few and often political turbulence between the policies of the President (Central Government) with the policies of the Regional Government or between the policies of the Governor and the Regents/Mayors, so that the approaches taken and implemented between the Central Government (President) and the Regional Heads are not unidirectional and out of sync, even covertly or openly there is a determinant of the interests of their respective party elites in programs and policies for the management and administration of government are compared with the interests of the public, the nation, the state and the people. Moreover, two or three years before the general election, both in the post-conflict local election and in the national general election (elections for the President and *DPR*, *DPRD*), the atmosphere of the difference is very pronounced.

Programs and policies that are based on egoism and are full of subjective interests of the elite interests of each party will be hazardous if they extend to the level of bureaucratic officials in carrying out their duties and functions as state servants and public servants, especially in the field of forming regional regulations, where the officials/staff in the Bureau and Legal Division of the local government without being selective and lacking in using common sense as legal scholars or legal experts who should have an obligation to provide objective legal studies and analyzes based on paradigms, theories, principles and dogmatics of applicable law, but in practice it turns out that they are only able to stand and function as bureaucrats or staff who are used as tools for the elite of the ruling party in the government. The team in the Bureau and the Legal Division, especially the Head of Bureau and the Head of the Section, should be able to provide an objective legal review of the legal politics of the formation of regional regulations.

Establishing correct, responsive, efficient, effective and targeted local regulations is problematic because it is closely related to many formal and material aspects. Legal aspects, among others, connect to the mechanism for forming regional regulations, their form and systematics, and competency issues. The material aspect is the substantial aspect, whether by the content of the Regional Regulation or not or by the social needs and aspirations (Prasetyo, 2007), values, principles and norms that apply. To fulfill the two aspects above, of course, requires knowledge and mastery of the field of legal politics in the formation of regional regulations. The emphasis on legal politics as the legal policy is needed because the science or study of legal politics also includes the political background behind the birth of the law (Mahfud MD, 2011).

The importance of mastery and knowledge of the legal politics of the formation of regional regulations based on positive law is one aspect that needs to be studied and researched scientifically so that the direction of the construction of regional rules and the substance/material of the contents of Regional Regulations is by the vision and mission of the state based on the 1945 Constitution of the Republic of Indonesia, the principles of the 1945 Constitution of the Republic of Indonesia. The principles and content of the applicable laws and regulations while still adhering to the existing Regional Legislation Program (*Prolegda*) and taking into account and considering the needs, developments and fundamental interests of local communities. So far, the practice that occurs in most regions, the field of legal politics for the formation of Regional Regulations as described above, has not received serious attention from the Regional Government. As a result, there are still many regional regulations that are wrong both in substance and in the direction of their formation, including weakness in their implementation and enforcement.

### Research Problems

The formulation of the problem in this research is how to build the legal politics of establishing regional regulations based on positive law in Indonesia?

### Research Methods

This type of research is normative juridical. Based on the type of research in question, the approach used is a legal approach equipped with a non-legal approach, namely politics. In accordance with the type of research that has been determined, the legal materials that the author uses are primary and secondary legal materials. Primary legal materials are in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the formation of laws and regulations and amendments to Law Number 15 of 2019 and Law 23 of 2014 concerning Regional Government with various amendments, while the secondary legal materials are in the form of books and articles, which are relevant to the issues to be discussed. The method of analysis is a qualitative juridical analysis.

### Discussion

#### Definition and Scope of Legal Politics

The term legal politics in the history of its development in Indonesia was first introduced by Soepomo two years after Indonesia's independence, namely in 1947. As a relatively new knowledge compared to other knowledge, legal politics has become a debate among scientists about whether it is included in the study of science. In law or political science studies (Mahfud MD, 2010), Burkens said that constitutional law only studied positive law, while Belinfante argued that the object of constitutional law included things outside positive law. The scope of Belinfante's version of constitutional law studies provides a place for the study of legal politics as part of legal science, especially constitutional law.

According to Bellefroid, legal politics is part of the science of law that examines changes in the applicable law that must be made to meet the new demands of people's lives. In contrast to Bellefroid, Lemaire argues that legal politics

include studies related to positive legal science (Latif, 2018). From the debates and differences of opinion about legal politics, what kind of science does it belong to? What is clear is that legal politics is in two scientific jurisdictions, namely legal science and political science. Legal politics is closely related to the two sciences in question. However, to answer whether legal politics is included in the legal sciences or political sciences? Then ontologically, it must be examined whether legal politics is substantially more dominant in discussing and studying legal science or legal norms or political science.? To answer this question, one must first understand the meaning of legal politics.

Abdul Hakim G. Nusantara defines legal politics as a legal policy that is to be implemented and implemented nationally by a certain state government (Juanda, 2022). Meanwhile, Padma Wahjono said that legal politics is a fundamental policy that determines the direction, form, and content of the law to be formed (Juanda, 2022). Moh. Mahfud MD defines legal politics as legal policy or legal direction that the state will enforce to achieve state goals by making new laws and replacing old ones (Mahfud MD, 2010). He even emphasized that legal politics includes the process of creating and implementing regulations that can indicate the nature and direction in which the law will be built and enforced. Mahfud further divided the study of legal politics into three groups. First is the official guide of the law that will be implemented or will not be enforced (legal policy) to achieve the goal of a completely new rule of law. Second, the political background and other social subsystems behind the law's birth, including the official direction of the law that will or will not be enforced. Third, the issues surrounding law enforcement, especially the implementation of the legal politics that have been outlined (Mahfud MD, 2010). It is even asserted that the politics of law includes a process of making and executing laws that can show the nature and in which direction the law will be built and enforced (Mahfud MD, 2017).

Deddy Ismatullah and Enung Nurjanah define legal politics as the basic policies of state administrators in the field of law that will, are currently, and have been applied in society to achieve the aspired state goals (Ismatullah, 2018). So, the understanding contains three dimensions, a favorable legal dimension, a past legal dimension and a future legal dimension. Meanwhile, Jazim Hamidi explained that legal politics is a policy taken or pursued by the state through state institutions or officials who are authorized to determine which laws need to be replaced, which need to be changed, which rules need to be maintained, or which laws need to be changed. Need to be regulated or issued so that with this policy, the administration of the state and government can run well and orderly, so that the state's goals can gradually be planned and realized (Hamidi, 2009).

In a thought that has almost the same meaning, it has also been stated by Bagir Manan that the politics of law includes the politics of law formation, the politics of determining the law and the politics of implementing and enforcing the law (Winardi, 2019). Furthermore, Bagir Manan stated that legal politics consists of legal politics that are permanent (permanent) and legal politics that are temporary, which remains related to the legal attitude which will always be the basis for policy formation and law enforcement. For Indonesia, legal politics

remain: (1) there is one Indonesian legal system; (2) The national legal system is built on and strengthens the principles of Pancasila and the 1945 Constitution. (3) no law gives special rights to certain citizens based on ethnicity, race or religion. Even if there are differences, they are solely based on national interests in the context of national unity and integrity (4) The formation of laws takes into account the plurality of society (5) Customary law and other unwritten laws are recognized as sub-systems of national law as long as they are alive and well maintained. In social interaction, (7) Laws are formed and enforced for the general welfare (social justice for all people), the realization of a democratic and independent Indonesian society and the implementation of a state based on law and the constitution.

Meanwhile, temporary legal politics is a policy that is determined from time to time as needed. This category includes determining priorities for forming colonial laws and regulations, updating laws and regulations that support national development, and so on. From some of the views of legal experts above, the definition of legal politics is a fundamental policy of the state or government in determining the direction of permitted development, what priorities, forms, types and legal substances will be formed, replaced, changed or revoked, maintained, and examines how the implementation, implementing, enforcing the law as well as evaluating specific rules so that they are suitable and by the development and needs of the people of a particular nation and state (Juanda, 2022).

Based on the understanding of legal politics, the scope of the discussion of legal politics includes and is related to many aspects, namely; aspects of politics, language, government, and other fields related to the law, including management in the area of law, starting from planning, parts of the formation, aspects of implementation, aspects of law enforcement, and aspects of the direction and substance of the law that will be formed, revoked, replaced and maintained. This means that legal politics requires the help of science outside the science of constitutional law and non-legal science. Therefore, it is clear and answered that legal politics is ontologically a clump of science whose object of study is law, both theoretically scientific law and practically normative law.

### **Related Political Law Forming Regional Regulations with the Country's Vision and Mission**

The national legal politics of a nation and state is developed and built based on a constitutional system. The constitutional system that applies in Indonesia is the 1945 Constitution of the Republic of Indonesia. The Preamble and the Articles of the 1945 Constitution of the Republic of Indonesia contain various basic norms in the state, namely having and regulating the constitutional system, including the legal system, political system, socio-economic system, and other state systems. The essential thing to always remember in the Preamble to the 1945 Constitution of the Republic of Indonesia, apart from those mentioned above, also contains the nation's philosophy of Pancasila, legal ideals, vision and mission of the state.

In the development and development of national legal politics, including the legal politics of establishing Regional Regulations, the basis and direction must be oriented to the vision and mission of the state. The vision and mission of the state are the primary guides in building the legal politics of the formation of Regional

Regulations. The development of legal politics for forming Regional Regulations is essentially an implementation of the national legal politics contained in the 1945 Constitution of the Republic of Indonesia. Every Constitution and Basic Law has a vision and mission of the state. These visions and missions are, of course, different from each other according to the background of the values and philosophy of the state, the conditions, the influential environment, and the needs and developments of the political, social, economic and aspired state goals.

For example, the vision and mission of the Indonesian state were formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. The idea of the Indonesian state is to form an independent, united, sovereign, just and prosperous Indonesia, while the mission of the state is to protect the entire Indonesian nation and the entire homeland of Indonesia and promote the general welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice. To realize this vision and mission, the Government and the people of Indonesia have and will carry out various efforts and strategies through national development by issuing various programs, regulations and basic policies by the needs and demands of each era and era. One of the fundamental national development policies to realize the state's vision and mission is the development of national legal politics and the legal politics of establishing Regional Regulations. Developing national legal politics and forming an ideal regional regulation must essentially begin and be closely related to thinking and reviewing legal planning, law formation, implementation and law enforcement. Legal planning is closely related to issues of national legislation programs and regional legislation programs.

There are long-term, medium-term and short-term legislation programs. Legal planning is also related to identifying problems regarding what legal substance or material is prioritized to be formed, changed or revised, replaced or revoked or maintained. Legal formation should not be interpreted as merely building, forming and fostering the substance or material of national legal content at the central level (e.g., Laws, Government Regulations) alone, but also thinking about and reviewing the issue of legal formation at the regional level, namely Regional Regulations. The appearance of the law at the regional level is an integral part of the framework of building rules and regulations nationally, which is part of the study of national legal politics that is responsive, accommodative, adaptive, futuristic and just. The formation of laws and regulations broadly includes activities to change, revise, replace, revoke and maintain existing legal materials and statutory regulations.

Forming laws and regulations at the regional level includes planning, establishing, and ratifying regional legal products, especially those related to regional autonomy. Provincial autonomy in its regulation is carried out in various regulations, namely regional legal products, namely regional regulations and regional head regulations. These regional legal products are also called regional-level laws and regulations. The formation of laws and regulations at the regional level systemically must follow and guide the principles and patterns of national

legal politics' development, basis, direction, vision and mission, as well as the substance and mechanism.

Implementing the law means studying how legal people enforce laws and regulations at the practical or empirical level. The performance of this law must be guided by the values, rules and principles of the applicable law, including heeding the principles and hierarchies of the applicable laws and regulations. Likewise, the aspect of law enforcement is part of national legal politics. Therefore, law enforcement must be genuinely consistent with the values and legal norms and guide the principles of law. Law enforcement aspires to enforce the law and realize justice, legal certainty, order, order, well-being, and inner happiness. All these aspects, starting from legal planning, law formation, law enforcement and law enforcement, are the scope and series that exist in the legal politics of the construction of Regional Regulations so that all of them work in a system based on the state philosophy of Pancasila, and is guided by the vision and state mission as contained in the Preamble to the 1945 Constitution of the Republic of Indonesia (Juanda, 2022).

## **The Foundation and Direction of Legal Politics for the Establishment of Regional Regulations**

### **a. Foundation**

According to the Big Indonesian Dictionary, the foundation is the base, bearings, anvil (bottom for forging, made of iron), airfield, and ground; the foundation, the laws of our country are Pancasila and the 1945 Constitution (Departemen Pendidikan Nasional, 2001). Guided by the understanding of the basis above, the author thinks that the legal, political basis and legal politics for the formation of regional regulations are values or principles that are the basis for being guided and obeyed in the framework of the development and development of national legal politics. In Indonesia, there are 4 (four) known foundations in society, nation and state: the ideal, constitutional, juridical, and operational. Likewise, the legal, political-legal and political foundations for the formation of Regional Regulations are as follows:

#### **1. Ideal Foundation**

The ideal foundation the foundation that contains perfect values in the form of religious, philosophical, and ethical values. These values are domiciled and function as the basis, controller, guide, guide, controller and means of testing in forming Regional Regulations. Why is it said to be the foundation, controller, guide, guide, controller and means of testing? Because it has the highest degree of value, universal and fundamental in the affairs of state administration. Therefore, we are familiar with Pancasila as the ideal foundation in Indonesia. This means that the Pancasila precepts contain religious, philosophical and ethical values, namely the values of divinity, humanity and civility, unity, democracy and representation, and social justice.

Because it is considered to be of the highest, universal, and fundamental value in the field of legal, and political development for the formation of regional regulations, Pancasila is domiciled and functions as the source of all

sources of state law. The same sentence is also found in Law Number 12 of 2011 concerning the formation of rules and regulations. Why is Pancasila referred to as the source of all sources of state law? Because if the narrative is "Pancasila is the source of all sources of law," then it means that we place and function Pancasila as the source of all laws that apply in Indonesia, which is very wrong. Such an error has occurred in the provisions of the TAP MPRS/XX/MPRS/1966, which formulates that "Pancasila is the source of all sources of law."

The sentence indirectly or tacitly admits that laws from "God Almighty" must be subject to and sourced from Pancasila. At least put the legal position that develops and is created by humans to be more correct and higher in rank than the law that originates and originates from Allah SWT. For example, the "Holy Book of the Qur'an" or the Scriptures of other religions is based on the philosophy of the Pancasila nation. At the same time, humans themselves were created by God Almighty. Therefore, to avoid misinterpretation and misinterpretation, there must be an additional word, "state," after the word "law" namely, "Pancasila is the source of all sources of "state" law.

In that context, Pancasila is domiciled and functions as a giver of soul and direction in the development and development of legal politics in the formation of Regional Regulations so as not to deviate, misdirect and conflict with the ideal values in question. Realizing the urgency of the position and function of Pancasila as the perfect foundation, the development of legal politics for the formation of Regional Regulations must also be based on and guided by Pancasila. In the same principle, Jawahir Thontowi stated that Pancasila could be interpreted as a system of values, a view of life (*weltanschauung*) and a system of norms, and even state ideology, as a legal ideal (*rechtsidee*), which functions to guide and direct the journey of the nation and state, as well as its people to making Pancasila a national agreement, a scrub agreement that has bound the Indonesian government in the past, present and future (Thontowi, 2016).

## 2. Constitutional Foundation

The Constitutional Foundation is the foundation that contains the basic norms or regulations regarding the life of the nation and state. The basic standards and regulations in Indonesia are the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia is the first (highest) source of formal law in the order of rules and regulations; the 1945 Constitution of the Republic of Indonesia serves as a means of testing and controlling lower statutes and regulations. With the position and function of the 1945 Constitution of the Republic of Indonesia as the highest ceremonial law, in the process of forming and developing national legal politics and the formation of Regional Regulations, it must be based on and guided by the applicable constitution.

This principle is essential to be guided so that the form, direction and substance or material regarding laws and regulations that want to be established, changed, replaced, revoked, maintained and how the



implementation and enforcement of the law must be synchronized and harmonized with the basic norms and regulations contained in the 1945 Constitution of the Republic of Indonesia. This means that the development and development of legal politics for the formation of Regional Regulations must be by and must not conflict with the principles or principles, paradigms, and substances contained in the 1945 Constitution of the Republic of Indonesia. With this aim also, understanding the principles or principles, paradigms, and substances contained in the 1945 Constitution of the Republic of Indonesia in relation to the development of legal politics for the formation of Regional Regulations is necessary. In the same thought, Jawahir Thontowi stated that in implementing the fundamental law or the 1945 Constitution of the Republic of Indonesia, the state and society must believe that the Basic Law is the highest in their country (Thontowi, 2016). That means no most heightened legal regulation must be obeyed except for the 1945 Constitution of the Republic of Indonesia.

### 3. Juridical Foundation

The juridical foundation is the foundation based on statutory regulations, which are lower in degree and position than the 1945 Constitution of the Republic of Indonesia and the MPR Decree but are above the Government Regulations. The legislation in question is the Law. This means that although the 1945 Constitution of the Republic of Indonesia is a type of legislation because the 1945 Constitution of the Republic of Indonesia has the status as a constitutional basis, the 1945 Constitution of the Republic of Indonesia can no longer be qualified as a juridical basis. The juridical basis is an abstract basis-general, for example, the law.

### 4. Operational Foundation

The two laws and regulations are operational normative and are the elaboration of the Act. The available basis is in the form of statutory rules whose degrees are below the Law but not Regional Regulations. Therefore, what can be categorized as operating foundations are implementing regulations or elaborating higher laws and regulations, for example, Government Regulations and Presidential Regulations.

### b. Direction of Legal Politics Formation of Regional Regulations

The Big Indonesian Dictionary formulates the notion of "direction" as majors, goals, and purposes (Departemen Pendidikan Nasional, 2001). Meanwhile, Sri Soemantri M. defines legal direction as a goal to be realized or achieved. Is the direction to be addressed legal unification or legal pluralism (Soemantri, 2014). If so, what is meant by "the direction of legal politics? To answer this question, it must be linked to the vision and mission of the Indonesian state. Talking about the vision and mission of the Indonesian state means that we must understand the contents of the Preamble to the 1945 Constitution of the Republic of Indonesia because, in the Preamble, it is also clear that the vision and mission of the state are regulated.

The vision of the Indonesian state is to form an Indonesian shape that is independent, united, sovereign, just and prosperous, while the mission of the state is to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, lasting peace and social justice. Guided by the vision and mission of the Indonesian state above, it is now our obligation and duty as the next generation of the nation and state to realize the aspired Indonesian state, namely an independent, united, sovereign, just and prosperous Indonesia. The question is whether the said state vision has been achieved. The answer is not complete. The meaning is not yet whole, meaning something has formally been realized but materially has not. If the answer is not yet, the next question will be when it will be recognized and how to make it happen. To answer the question of when the state's vision will be fully realized, it is difficult to predict or calculate precisely when. What year? However, at least it will be answered through various efforts with programs and policies to increase quantity and quality in various fields of state administration. For example, national legal politics is oriented toward the vision of an "independent" state; the meaning of independence can be interpreted that national legal politics both in the planning, formation, implementation, and law enforcement stages, must be utterly free from colonial practices or break away from colonialism. Colonial character of law or intervention from any party. The efforts referred to can be in the form of revoking, replacing, or changing the norms or legal rules that are colonial and have a legal character by the cultural character and values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Likewise, in the implementation and enforcement of the law, politics, the rule for the formation of Regional Regulations are directed to adhere to the principles strictly, is consistent, objective, transparent, non-discriminatory, humanist and the realization of justice, legal certainty, order, welfare, harmony and inner and outer happiness.

The legal politics of the formation of Regional Regulations is directed toward a "vision of a "unified" state. That is, the direction of the development of legal politics in the formation of Regional Regulations must be oriented towards strengthening national unity and making Regional Regulations a means to build public legal awareness so that this nation is united within the framework of one country and unitary state and the realization of national legal politics and legislation with an archipelago perspective. An archipelago perspective means that there is a national legal system that serves the national interest. In other words, one national legal system includes several; national law subsystems, namely constitutional law subsystem, administrative law subsystem, environmental law subsystem, tax law subsystem, Islamic law subsystem, non-Islamic law subsystem, civil law subsystem, criminal law subsystem, information technology law subsystem, customary law subsystem, legal subsystem International both public international and private international, space law subsystem, air law subsystem, agrarian subsystem, health law subsystem, and human rights law subsystem.

Likewise, the word "sovereign," the development and development of legal politics for the formation of Regional Regulations, must reflect the existence of sovereignty in the legal field. Power in the field of law means that in the process of forming rules and regulations, implementing laws and enforcing laws/regional regulations, non-legal elements should not be interfered with, be it economic, political, power and other subjective factors that can have an impact on the erosion of the existence of a law or The Regional Regulation itself thus degrades or reduces the sense of justice, legal certainty, order, welfare, harmony, and inner and outer happiness in the life of society, nation and state. This is because so far, in the process of forming, implementing and enforcing laws and regulations in Indonesia, sovereignty in the field of law and regional rules seems to be far from what it aspired to. Therefore, the state's vision so that laws and regulations (Regional Regulations) are sovereign is essential to prioritize and pay attention to.

The state's vision in the "just and prosperous" field is indeed fundamental and awaited by the Indonesian nation and its people. Therefore, the development and development of legal politics and legal politics of the formation of regional regulations must be able to encourage and support other fields so that the Indonesian nation and people can achieve a just and prosperous society. It is certainly not easy to realize the vision of an appropriate and prosperous state because, in addition to many factors that play a role and are related, the indicators of "fair and prosperous" are qualitative, with various variables influencing it. What is clear is that at least the legal politics and legal politics of the formation of regional regulations must be built towards and oriented towards the realization of a just state from the legal aspect and prosperous from the economic aspect. The planning, formation, implementation and enforcement of the law as part of the national legal and political process is directed at realizing a "just and prosperous" society. It is not the applicable law that makes this society and nation miserable, burdensome, unfair and not prosperous.

In addition to the vision of the state as described above, it must be realized that the legal politics of establishing Regional Regulations must be directed, developed and built to support the mission of the state, namely to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in an implement world order based on freedom, eternal peace and social justice.

The development and development of legal politics for the formation of regional regulations must also be directed at forming regional regulations, implementing regional regulations, and enforcing regional rules that protect the entire nation, promote public welfare, educate the nation's children and participate in carrying out world order based on independence, eternal peace and social justice. Moh. Mahfud MD in the same context as described, if the law is defined as a tool to achieve goals and achieve goals, then legal politics is defined as the direction that must be taken in making and enforcing laws to

achieve the ideals and objectives of the nation. In other words, legal politics is an effort to make the law a process of attaining dreams and goals.

The opinion of Moh. Mahfud MD above emphasizes that the legal politics of forming Regional Regulations must be able to create a just and prosperous society, must be able to guard the goals of the state, must be guided by the ideals of state law, and must be guided by the values of Pancasila. The legal politics of the formation of Regional Regulations must be pursued to realize the objectives of regional autonomy, namely so that the Region and its people are prosperous, independent, fair and prosperous, competitive, and free from poverty and ignora.

### **Legal Politics Establishing Local Regulations Based on Positive Law**

Before the author puts forward the meaning of legal politics for forming Regional Regulations, it is necessary to understand what is meant by legislation and the role of legal politics in creating laws and regulations. The invitation is a written regulation that contains legally binding norms in general. It is established or determined by state institutions or authorized officials through procedures stipulated in laws and regulations.

The provisions of the laws and regulations referred to are Law Number 12 of 2011 concerning the formation of rules and regulations, Law Number 23 of 2014 concerning Regional Government, and the principles and systems contained in the 1945 Constitution of the Republic of Indonesia. Furthermore, according to Law Number 12 of 2011, the formation of laws and regulations is the making of rules and regulations that include the stages of planning, drafting, discussing, ratifying or determining, and enacting. Meanwhile, what is meant by the formation of Regional Regulations based on Article 237 paragraph (2) of Law Number 23 of 2014 concerning Regional Government includes the stages of planning, drafting, discussing, stipulating, and enacting laws that are guided by the provisions of rules and regulations. Some of these laws and regulations are considered favorable in reviewing the legal politics of forming Regional Regulations.

In the process of forming Regional Regulations, the role of legal politics is vital. Therefore, there are at least two reasons; first, as a reason why it is necessary to establish a statutory regulation. Second, to determine what will be translated into legal sentences and become the formulation of articles (Latif, 2018).

The author himself thinks that the role of legal politics in the framework of the formation of Regional Regulations is not only essential but strategic because, in addition to examining the issue of the substance of the Regional Regulations, it also looks at the mechanism procedure, determining the priority scale on state or regional policies regarding regional regulations that will be formed, replaced, modified and maintained.

Referring to the definition of legal politics and the formation of Regional Regulations mentioned above, the legal politics of forming regional regulations is a state or regional policy regarding the planning, formation, replacement, and amendment of Regional Regulations, including the implementation and enforcement of Regional Regulations as well as the direction to be directed from

the formation of Regional Regulations. to realize the goals of the state and regional autonomy.

From this understanding, it can be understood that the legal politics of regional formation requires knowledge of legal management that is correct, ideal, democratic, responsive, and efficient. Practical and realistic, especially highly correlated with the orderly preparation of the Regional Legislation Program (*Prolegda*) because *Prolegda* is a planning instrument for forming Provincial Regulations or Regency/City Regional Regulations that are prepared in a planned, integrated, and systematic manner.

The importance of *Prolegda* in forming Regional Regulations is one of the keys and aspects of success in building the concept of legal politics for the formation of Regional Regulations. This is because the rational, realistic, objective and responsive preparation and stipulation of *Prolegda* means that the problems that will be regulated and developed over the next five years and one year will be described.

By planning the establishment of a precise Regional Regulation by the demands, needs and development of specific regional communities, it is hoped that Regional Regulations can be used as a means of regulating and managing government administration, social society, and regional development in the field of regional autonomy, assistance tasks and further elaboration. Higher laws and regulations with fairness, efficiency, effectiveness and legal certainty.

Talking about justice in terms of law and local regulations, since the time of the Athenian trio of philosophers (Socrates, Plato, and Aristotle) have emphasized that justice is the essence and essence of the law. The importance of law is justice. Law serves to serve the needs of justice in society. Law refers to a rule of life by the ideals of living together, namely justice. The content of the rule of law should be fair. Without justice, the law is only formalized violence. Law is felt to be critical when dealing with injustice (Winardi, 2019).

Similarly, about compliance with the principle of formation of regional regulations as stated in Article 237 of Law Number 23 of 2014 concerning Regional Government, namely the declaration of construction and the material of the content of Regional Regulations guided by the provisions of laws and regulations and legal principles that grow and develop in society as long as they do not contrary to the principles of the Unitary State of the Republic of Indonesia. Therefore, the legal politics of the formation of Regional Regulations must also follow the directions contained in positive law, both in Law Number 12 of 2011 concerning the construction of rules and regulations and in Law Number 23 of 2014 concerning Regional Government. The principles for the formation of the Regional Regulations referred to are regulated in Article 5 of Law Number 12 of 2011, namely:

- a. clarity of purpose;
- b. the appropriate forming institution or official;
- c. suitability between types, hierarchies, and payload materials;
- d. can be implemented;
- e. usability and effectiveness;
- f. clarity of formulation; and

g. openness.

Furthermore, in Article 6 of Law Number 12 of 2011, in the field of material content, regional regulations must pay attention to the following principles:

- a. shelter;
- b. humanity;
- c. nationality;
- d. kinship;
- e. archipelago;
- f. Unity in Diversity;
- g. justice;
- h. equal position in law and government;
- i. order and legal certainty; and/or
- j. balance, harmony, and harmony.

In addition to guiding and paying attention to the "principles for the formation of laws and regulations," the legal politics of the formation of Regional Regulations must also teach and pay attention to other state principles, namely as follows:

1. Principles by the ideals of Indonesian law Pancasila.
2. The principle of the constitutional system or the system of the 1945 Constitution of the Republic of Indonesia is a principle that prioritizes and prioritizes the basic norms contained in the 1945 Constitution. The development of legal politics for the formation of Regional Regulations must be guided and constitutionally tested so that they are not wrong and wrong in their implementation.
3. The principle of the rule of law is the principle that prioritizes the law as the foundation, guideline, and means in realizing the legal politics of establishing Regional Regulations.
4. The principle of a unitary state is the principle that puts forward the interests of common unity in one country, unity in all aspects, both aspects of territory, law, government, politics, economy, defense and security, as well as other fields.
5. The principle of justice is the principle that always prioritizes and prioritizes justice, the legal politics of the formation of regional regulations is built for the realization of justice in society.
6. The principle of welfare is a principle that is oriented towards the interest of the people, not to the detriment of the people. The legal politics of forming regional regulations must have a prosperous impact on the nation, the people of the region and the state without being discriminatory.
7. The principle of expediency is the principle that always prioritizes and brings benefits to the interests of the community, nation and state, so the legal politics of establishing regional regulations must provide benefits to the regional community, country and state.
8. The principle of legal certainty is a principle that prioritizes something by the law and statutory regulations. The legal politics of the formation of regional rules must be able to create and present legal certainty in every life.

9. The principle of human rights and human obligations is a principle in the legal politics of forming regional regulations that must be observed so that every applicable policy and law must pay attention to and fulfill human rights and human obligations.
10. The principle of balance, harmony and harmony means that the legal politics of establishing regional regulations must be based on the principles of balance, peace and harmony as known in Pancasila. These principles function as guides, controllers, examiners and controllers in implementing the national legal system so that there is balance, peace and harmony in the dimensions of public/public interest or the state with groups or individuals, the dimensions of national scope with regions, provincial areas with districts and cities. And between regions at the federal or local level. Likewise, in the sizes of the needs of the central and regional governments, between the interests of centralization, decentralization and deconcentration.
11. The principle of accountability is the principle that determines that every activity and the final result of activities in the legal and political development of the establishment of regional regulations must be accountable to the community or the people as the holder of the highest state sovereignty by the provisions of the applicable laws and regulations.
12. Culture-based principle, meaning that the legal politics of forming regional regulations must be built based on cultural values. There is a view that states that good law is a law that is the living law in society which is, of course, also appropriate or is a reflection of the values that apply in that society (Kusumaatmadja, 2002).

In addition to reflecting the principles referred to, certain regional regulations may contain other principles in accordance with the relevant regional regulations. In connection with the planning of the program for the formation of legislation, Bagir Manan and Kuntana Magnar have long reminded them to pay attention to the legal system in addition to the principles contained in Pancasila, the conception of the rule of law, the focus of constitutionalism, the codes of good laws and regulations, general legal principles, the principle of authority and so on (Manan, 1993). In the context of legal planning related to legal politics, Abdurrahman's thoughts are still relevant to be guided by that the 1945 Constitution (read before amendments) in a straightforward form has provided direction on how the law in Indonesia should be built (Abdurrahman, 1995). However, the concept of planning how the law should be made has not been formulated. This means that the importance of planning in forming statutory regulations (regional regulations) has long been reminded, but competent lawmakers or regional regulations have always neglected it. Even now, planning has been guided through *Prolegnas* and *Prolegda*, but it is still ineffective enough to form the right laws (regional regulations).

The direction or orientation, type, and principle of content material in forming regional regulations in Indonesia cannot be separated from national law formation's legal and political issues. In line with this, Jimmy Asshiddiqie said that law-making provisions at the regional level should also follow the pattern at the

central station (Asshiddiqie, 2012). Therefore, the direction and substance of the development of legal politics for the formation of regional regulations according to positive law are as follows:

1. Must refer to and be oriented to the vision and mission of the state, principles and norms of national legal politics contained in the 1945 Constitution of the Republic of Indonesia, for example, the principles of a state of law, democracy and a unitary state as organized in Article 1 of the 1945 Constitution of the Republic of Indonesia.
2. The formation of regional regulations must be oriented and pay attention to aspects of human rights, environmental management and sustainable development.
3. Establishment of regional regulations that can improve services, independence and people's welfare.
4. Establishment of regional regulations that foster competitiveness and encourage a competitive investment climate based on the principles of legal certainty and justice.

Meanwhile, the content of regional regulations, apart from referring to the principles contained in Law No. 12 of 2011 concerning the formation of laws and regulations and Law No. 23 of 2014 concerning Regional Government, also substantially includes matters that are the authority of regional affairs. Local government, namely:

1. Elaboration and implementation of regional autonomy affairs and co-administration tasks.
2. The elaboration of higher laws and regulations.
3. The formation of regional regulations is based on the *proglegda*.
4. Establishment of regional regulations that can support the empowerment of regional potentials and characteristics.
5. The establishment of regional regulations seeks to abandon the principle of increasing *PAD* through provincial taxes and levies burdening people with high costs. This means that it must be efficient and effective in terms of costs and implementation.
6. The formation of regional regulations is a response to the aspirations, needs and demands of the community or the results of research, not because of the interests of elites in the regions or because they are copy-paste from the other areas.
7. The formation of regional regulations considers and strengthens harmonization and synergy between legal products in stages from the Center, Province and Regency/City or horizontally for neighboring autonomous regions.
8. Regional regulations must be formed by a review of academic texts, except for the *Raperda APBD* and *APBDP*.
9. The formation of regional regulations is carried out based on a priority scale.
10. Establishment of regional regulations to deal with extraordinary circumstances, conflict situations, or natural disasters.
11. Establishment of regional regulations to follow up on cooperation with other parties.



12. The formation of regional regulations overcomes certain other circumstances that ensure the urgency of a draft Perda that the apparatus can jointly approve of the DPRD that explicitly handles the field of forming Perda and the unit that controls the legal area within the Regional Government.
13. Formation and amendment of regional regulations in the context of following up on the decision of the Supreme Court as a result of a judicial review of statutory regulations under the Act or as a result of a decision of the Constitutional Court on a judicial review of a statutory provision related to regional autonomy affairs and co-administration or local interests.
14. The formation of regional regulations is ordered from the provisions of higher laws and regulations after the program for establishing a regional rule is found.

From the various elements that are interrelated and form a single unit in building the legal politics of the formation of these regional regulations, it can be summarized that the legal and political direction of the preparation of regional regulations remains within the framework of national legal politics, namely realizing the legal ideals and ideals of the state and federal goals as contained in Pancasila and 1945 Constitution. In addition, the legal politics of the formation of regional regulations seek to strengthen the sense of nationalism in a unitary state with an Indonesian pattern through the recognition and awareness that autonomy is one of the fundamental aspects to be realized in the practice of administering regional government and the benefits and results can be felt by the people, through various policies and programs.

These policies and programs are implemented and stated in a regional regulation that can improve services, growing competitiveness, regional independence and people's welfare. No, and it cannot be said that an autonomous region is autonomous if the benefit from bureaucratic officials is still weak, the area has not been able to be independent in the field of budgeting, managing the resources and potential of the region and in the people's welfare sector is still below the standard of feasibility.

The legal politics of forming regional regulations must be directed to no longer produce provincial laws that burden the people with the motivation to increase Regional Original Income. Because many regions or local governments are trapped in the wrong actions in exploring the potential of their parts to obtain financial sources, and sources of income are increasing, but without realizing that regional regulations are formed containing norms that make people increasingly burdened with various provincial taxes and levies. This kind of policy is very often found in multiple regional regulations in all regions of Indonesia. This can happen because the apparatus or officials in the areas, including the Head of Bureau, Head of Section or sub-section or staff in the Legal Bureau or Legal Department do not understand the legal politics of forming regional regulations, meaning that they do not understand the scope of policy directions allowed in the formation of regional rules, which one can be set or not.

The legal politics of forming regional regulations should always pay attention to aspects of human rights. The issue of human rights is becoming increasingly important as a national, local, regional or international issue. Suppose this issue is

not considered in the formation of regional regulations in the future. In that case, it can be used as material for the cancellation of regional regulations through Judicial Review at the Supreme Court by interested parties or through repressive oversight functions, and this is very sensitive in the era of autonomy, democracy and globalization in the future. Even so, environmental issues as part of the substantive aspect of human rights are an essential part of the legal politics of establishing regional regulations.

The legal politics of the formation of regional regulations should pay attention to the real needs and demands of their respective regions with the mechanism involving the participation of the people and community leaders related to the material of the draft regional regulations, in particular; elements of community organizations, religious leaders, student figures, university lecturers, and equipped with a scientific study in the form of an academic manuscript. In practice, these aspects have not been given much attention; even if they have been considered or carried out, it seems that it is just a formality.

In reviewing the legal politics of the formation of Regional Regulations, the author reminds the parties concerned that the legal politics of Regional Regulations will be considered efficient and effective if the implementation and enforcement of Regional Regulations have been carried out effectively, efficiently and fairly. When the implementation and enforcement aspects cannot be realized, the legal politics of the formation of Regional Regulations cannot be declared successful and beneficial for the interests of the local people.

## **Conclusion**

The development of legal politics for the formation of regional regulations according to positive law is as follows: must refer to and be oriented towards the vision and mission of the state, principles and norms of national legal politics contained in the 1945 Constitution of the Republic of Indonesia, for example, the principles of a state of law, democracy and a unitary state as organized in Article 1 of the 1945 Constitution of the Republic of Indonesia; the formation of regional regulations must be oriented and pay attention to aspects of human rights, environmental management and sustainable development; establishment of regional regulations that can improve services, independence and people's welfare; establishment of regional regulations that foster competitiveness and encourage a competitive investment climate based on the principles of legal certainty and justice; must refer to and be oriented to the basics, values, theories, principles and norms of national legal politics and integral parts and sub-systems of legal politics in forming laws and regulations; oriented and pay attention to aspects of human rights and consider aspects of environmental management and sustainable development; must be oriented towards improving services, independence and welfare of local people; improving competitiveness and encouraging a competitive investment climate based on legal certainty and justice principles; the formation of regional regulations that are rational, realistic, aspirational, responsive, accountable, efficient, effective, fair and efficient; the legal politics of establishing Regional Regulations is considered adequate and effective if the implementation and enforcement of Regional Regulations have been carried out effectively,

efficiently and fairly; and that the legal and political direction for the formation of regional regulations is in the context of realizing the vision and mission of the state, legal ideals and national goals as contained in Pancasila and the 1945 Constitution.

From the material aspect of the content of the formation of regional regulations that are important and must be considered, among others: elaboration and implementation of regional autonomy affairs and co-administration tasks; the elaboration of higher laws and regulations; the formation of regional regulations is based on the proglegda; establishment of regional regulations that can support the empowerment of regional potentials and characteristics; the establishment of regional regulations seeks to abandon the principle of increasing *PAD* through provincial taxes and levies burdening people with high costs. This means that it must be efficient and effective in terms of costs and implementation; the formation of regional regulations is a response to the aspirations, needs and demands of the community or the results of research, not because of the interests of elites in the region or because they are copy-paste from the other areas; the formation of regional regulations considers and strengthens harmonization and synergy between legal products in stages from the Center, Province and Regency/City.

### Suggestion

In order to develop legal politics for the formation of regional regulations in the future, it is necessary to consider the following matters: it is hoped that in the future, the Law College or Law Faculty will open a special section in the field of drafting legislation, meaning that it is no longer limited to providing courses in drafting legislation in the Constitutional Law section. Still, more than that, opening a special team in the field of legislative design by revamping the existing curriculum; before suggestion number 1 above is realized, then, for the time being, the parties who are authorized to place staff and officials in the Bureau or Legal Section at the Regional Government Secretariat or *DPRD* secretariat or agencies (*SKPD*) master the legal politics of establishing regional regulations or the science and technique of legislation; for these purposes and needs, it should be essential to think about and do the local government and the central government to recruit or prepare to increase staff who come from law graduates who are experts in the field of drafting legislation, including the design of regional legal products; and promote and prepare programs and budgets for research on the legal politics of Regional Regulations and socialization of the legal politics of Regional Regulations to all levels of society in a planned, gradual, and sustainable manner.

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