

THE NATURE OF ACADEMIC PAPERS IN THE FORMATION OF LOCAL REGULATIONS (STUDY IN GORONTALO PROVINCE)

A NATUREZA DOS TRABALHOS ACADÊMICOS NA ELABORAÇÃO DE REGULAMENTAÇÕES LOCAIS (ESTUDO NA PROVÍNCIA DE GORONTALO)

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The authors declare that there is no conflict of interest

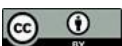
Abstract

This study aims to analyze and explain the existence, implementation, and influencing factors of academic papers in the formation of regional regulations in the Gorontalo Provincial Government. Data were collected through interviews and questionnaires from 60 respondents, including Regional Government Work Units (SKPD), members of the Regional House of Representatives (DPRD), and the public in three selected areas: Bone Bolango Regency, Gorontalo Regency, and North Gorontalo Regency. The data were analyzed both qualitatively and quantitatively using frequency distribution. The results show that: (1) Academic papers serve as essential guidelines because they contain scientific analyses of issues that require regulation through regional legislation; (2) The implementation of academic papers has not been optimal due to limited budget allocation for their preparation; (3) The main obstacle is the lack of budget support and inadequate socialization, which leads to limited public awareness of the importance of academic papers in drafting regional regulations.

Keywords: Academic Papers. Regional Regulations.

Resumo

Este estudo tem como objetivo analisar e explicar a existência, a implementação e os fatores que influenciam os trabalhos acadêmicos na elaboração de regulamentações regionais no Governo Provincial de Gorontalo. Os dados foram coletados por meio de entrevistas e questionários com 60 entrevistados, incluindo Unidades de Trabalho do Governo Regional (SKPD), membros da Câmara Regional de Representantes (DPRD) e o público em três áreas selecionadas: Regência de Bone Bolango, Regência de Gorontalo e Regência de Gorontalo do Norte. Os dados foram analisados tanto qualitativa quanto quantitativamente, utilizando distribuição de frequência. Os resultados mostram que: (1) Os trabalhos acadêmicos servem como diretrizes essenciais, pois contêm análises científicas de questões que requerem regulamentação por meio da legislação regional; (2) A implementação dos trabalhos acadêmicos não tem sido ideal devido à alocação orçamentária limitada para sua elaboração; (3) O principal obstáculo é a falta de apoio orçamentário e a socialização inadequada, o que leva a uma conscientização pública limitada sobre a importância dos trabalhos acadêmicos na elaboração de regulamentos regionais.



Palavras-chave: Artigos Acadêmicos.
Regulamentos Regionais.

1 INTRODUCTION

Indonesia declares itself a state based on the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states, “The State of Indonesia is a state based on the rule of law.” As a state governed by law, all aspects of national, societal, and governmental life, including the administration of government, must be based on laws in accordance with the national legal system. The national legal system includes all mutually supporting legal elements, both written laws such as legislation, and unwritten laws such as customary law, religious law, and jurisprudence. In practice, the principle of a state governed by law is reflected in the existence of an independent judiciary free from interference, the transparent and participatory formation and enforcement of laws, and oversight of government by institutions such as the Corruption Eradication Commission (KPK), the Audit Board of Indonesia (BPK), and the Ombudsman. A state governed by law also guarantees the protection of human rights, including the right to justice and fair treatment before the law, and encourages increased legal awareness through education and access to legal information. Law enforcement must be carried out consistently and without discrimination. The formation of legislation is the implementation of the mandate of Article 22A of the 1945 Constitution and is further regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which outlines the stages of formation, including planning, drafting, discussion, ratification, enactment, and promulgation. In the context of regional autonomy, Article 18 paragraph (6) of the 1945 Constitution authorizes regional governments to formulate regional regulations (Perda) as legal instruments to implement central and regional policies, accommodate specific regional conditions, and elaborate higher-level regulations. Regional regulations play an important role as tools of social and democratic transformation and as drivers of community welfare in the regions. In the process of forming regional regulations, one crucial stage is planning through the Regional Legislative Development Program

(Propemperda), which is systematically organized. Each draft regional regulation must be accompanied by an explanatory note and/or academic paper as stipulated in Article 56 paragraph (2) of Law No. 12 of 2011. The academic paper is highly important and strategic as it is based on research into the values that live within the community and serves as scientific accountability for the proposed draft regulation.

Historically, the term “academic paper” was officially introduced through the Decree of the Head of the National Law Development Agency (BPHN) Number G-159.PR.09.10 of 1994, which defined it as an initial manuscript containing the regulation of a specific subject matter that has been reviewed systemically, holistically, and futuristically. In this context, the existence of an academic paper becomes a key instrument in ensuring that the substance of a regional regulation aligns with the objectives of regional autonomy and public welfare, while also reinforcing the legality and effectiveness of the regulation being formed. In the development of regulations concerning academic papers, various laws and regulations determine whether or not a draft regulation needs to be accompanied by an academic paper. In practice, differing opinions arise regarding the academic paper's nature. The first opinion holds that there is no distinction between the academic paper and the draft regulation since both are structured in chapters, articles, and paragraphs, differing only in terms of who prepares them: the draft regulation is prepared by authorized institutions or officials, while the academic paper is prepared by parties without formal authority, such as university experts or non-governmental institutions like consulting firms. The second opinion asserts that the academic paper contains academic justification for drafting legislation, and its main component is that justification. Therefore, it need not be structured in chapters and articles; what matters is its content, which should include academic analysis of various aspects of the legislation to be drafted. During the preparation of an academic paper, the juridical, sociological, and philosophical foundations are deeply examined through prior research and scholarly study. Thus, it is at this stage that the bases, rationales, and considerations—beyond mere political factors—are formulated, encompassing legal, sociological, economic, and philosophical aspects, along with potential impacts such as the financial burden on the state. In legislative science, an academic paper is a prerequisite for drafting legislation, and its formation must refer to Law Number 12 of 2011 on the Formation of Laws and Regulations, replacing Law Number 10 of 2004. This law

introduced several important provisions, one of which is the requirement to attach an academic paper to proposed legislation. According to Article 1 point 11, an academic paper is defined as the result of legal research or other research on a specific issue that can be scientifically justified as the basis for regulating that issue in a Draft Law, Draft Provincial Regulation, or Draft Regency/Municipal Regulation as a solution to societal legal problems and needs. To implement this provision, Minister of Home Affairs Regulation Number 53 of 2011 was enacted, later amended by Minister of Home Affairs Regulation Number 1 of 2014, and most recently by Minister of Home Affairs Regulation Number 80 of 2015 on the Formation of Regional Legal Products. Paragraph 1 on the Preparation of Regional Regulation Drafts within Regional Governments, Article 17, stipulates that the regional head instructs the head of the relevant Regional Government Work Unit (SKPD) to draft regional regulations based on the Regional Legislative Program (Prolegda), and Article 18 paragraph (1) states that the head of the SKPD prepares the draft regulation accompanied by an explanation and/or academic paper. In this regard, the Provincial Government of Gorontalo, in forming regional legal products—especially in drafting regional regulations—has followed the applicable legislative mechanism, whether the initiative comes from the Regional House of Representatives (DPRD) or the executive, particularly in the process of preparing academic papers. However, in practice, the substance of academic papers often does not adequately support the proposed draft regulations. Even after the regulation is enacted, the academic paper is sometimes no longer available in a complete and systematic form. Furthermore, the preparation of academic papers often fails to reflect whether the proposed regional regulation is truly needed by the community. This situation arises because the study of the academic paper is not supported by in-depth and systematic research. Based on the above explanation, it can be concluded that the issue of academic papers in the formulation of regional regulations is highly urgent and requires further research and review, as the existence and quality of the academic paper's substance are critical to the effectiveness and applicability of a regional regulation. Therefore, a comprehensive study on the essence and role of academic papers in legislative drafting—especially in the preparation and submission of draft regional regulations—is indispensable.

2 RESEARCH METHODS

Penelitian ini merupakan penelitian hukum empiris yang tidak hanya memandang hukum sebagai kumpulan norma atau aturan yang tertulis dalam peraturan perundang-undangan (Law in Books), tetapi juga melihat bagaimana hukum tersebut dijalankan dan berlaku dalam realitas sosial masyarakat (Law in Action). Dalam konteks ini, fokus utama penelitian adalah pada ketentuan penyusunan Rancangan Peraturan Daerah yang mensyaratkan adanya Naskah Akademik sebagai bagian awal yang fundamental serta menjadi pedoman dalam proses penyusunan regulasi. Hal ini menunjukkan bahwa keberadaan Naskah Akademik tidak sekadar formalitas, melainkan memiliki peran penting sebagai pijakan ilmiah yang mengarahkan kualitas dan substansi peraturan daerah yang akan dibentuk, serta mencerminkan dinamika antara aspek normatif hukum dan pelaksanaannya dalam praktik pemerintahan dan masyarakat.

3 DISCUSSION

3.1 The nature of academic manuscripts in the formulation of regional regulation drafts at the Gorontalo Provincial government

The existence of academic papers has a very strategic and crucial role in the process of forming good laws and regulations. In the context of Indonesian state administration, which is in the middle of a democratic transition, there are many legal provisions that do not fully regulate all aspects of people's lives. This is where the importance of academic papers as a scientific foundation underlying each draft legislation. This manuscript not only helps formulate regulations systematically and comprehensively, but also opens space for public participation to convey aspirations and assessments of the substance to be regulated, thus reflecting the principles of healthy democracy.

Apart from being a scientific basis, the existence of Academic Scripts is an implementation of the principle of compatibility between the type and content of laws and regulations. In drafting regulations, it is important to ensure that the material regulated is in accordance with the type of regulation being formed. Academic papers

help to properly describe the material and ensure that the regulations can be implemented effectively, in accordance with the principle of implementability and taking into account philosophical, sociological and juridical principles. Through the Academic Paper, the principles of usefulness and usability can also be reflected, i.e. regulations are drafted because they are really needed and are able to provide real benefits to the community, nation and state.

In the context of the formation of Local Regulations (Perda), Academic Scripts also play an important role in ensuring that the Perda made does not conflict with higher regulations in the hierarchy of legislation. Since local regulations occupy the lowest position in the hierarchy, it is very important for the drafter to conduct an inventory and harmonisation with the 1945 Constitution, Law, Perpu, PP, Perpres, and other relevant regulations. In this case, the Academic Paper contains an in-depth study of all relevant regulations and becomes an important tool to ensure harmony between levels of legal norms.

Permendagri No. 80/2015 explicitly defines an Academic Paper as the result of research or scientific study of an issue that can be academically accounted for as the basis for drafting provincial or district/city regulations. Although in Article 56 of Law No. 12/2011 academic papers are positioned parallel to explanations or information, in reality academic papers have a much stronger depth and methodology because they are the result of legal studies or research.

The provision further states that for draft local regulations concerning the APBD, revocation of local regulations, or limited amendments to local regulations, it is sufficient to be accompanied by a statement, while for other draft local regulations, academic papers are mandatory. Thus, this regulation emphasises the importance of academic papers as an integral part of the regional legislative process.

In its development, through Constitutional Court Decision Number 137/PUU-XIII/2015 and Decision Number 56/PUU-XIV/2016, there are legal implications for the guidance of regional legal products by the Minister of Home Affairs and governors. This led to the emergence of Permendagri Number 120/2018 which removed the provisions on PB KDH as one of the forms of regional legal products. After the change, regional legal products only consist of:

1. Regulations,

2. Peraturan Kepala Daerah (Perkada), and
3. DPRD Regulations.

Meanwhile, legal products in the form of stipulations such as regional head decisions, DPRD decisions, and others have not changed.

The drafting of Perdas is carried out through the Perdas Formation Programme (Propemperda), both on the initiative of the executive (Regional Head) and legislative (DPRD). The initiator is obliged to include explanations, information, and/or academic papers depending on the type of draft proposed. If the draft is not included in the category excluded by Article 56 paragraph (3) of Law No. 12/2011, then the inclusion of an Academic Paper is an absolute requirement.

In terms of implementation, a survey in 2021 showed that 88.3% of respondents stated that they knew the importance of academic papers in the formation of local regulations, while 10% were less aware and 1.7% did not know. Respondents who knew the majority came from the legislature and local government elements. In contrast, the general public's lack of understanding reflects the lack of socialisation and community involvement in the drafting process. This is an important note that public participation and information disclosure need to be improved, so that people can understand and contribute to the formation of policies that directly touch their lives.

In addition, the use of the term 'accompanied' in regulations often leads to different interpretations of the position of academic papers. Many equate it with an explanation or statement, even though the two are different in terms of methodology and scientific legitimacy. Academic papers are produced through a rigorous process of research and legal studies, while explanations or statements can be narrative and not based on scientific research.

Another survey showed that 98.3% of authorised officials understand the procedures for the formation of laws and regulations involving academic papers, while 1.7% stated that they did not understand and none of them did not understand at all. This fact shows that internal understanding among policymakers is relatively good, but there is still a gap in the distribution of this understanding to the public.

Starting from the harmonization process that has been described, the academic manuscript, as a tool for harmonizing regional regulations, has great potential to produce good and responsive regional regulations, in accordance with statutory provisions and

public demands for regional development. According to Yasmin Isa Rahim, one of the causes behind the emergence of unresponsive regional regulations is the lack of understanding among parties involved in the preparation of academic manuscripts regarding the various aspects required in drafting such documents. Another opinion is conveyed by Tahir Badu, who states that the issue stems from the failure to accommodate public interests prior to the enactment of the regional regulation. The authority to harmonize the draft Provincial Regional Regulation is stipulated in Article 58 paragraphs (1) and (2) of Law Number 12 of 2011 on the Formation of Legislation, which reads as follows: The harmonization, alignment, and conceptual consolidation of draft Provincial Regional Regulations originating from the Provincial DPRD (Regional House of Representatives) are coordinated by the legislative body of the DPRD tasked specifically with legislation. The harmonization, alignment, and conceptual consolidation of draft Provincial Regional Regulations originating from the Governor are coordinated by the legal bureau and may involve vertical institutions from ministries handling government affairs in the field of law. The authority to harmonize as outlined above rests with the legal bureau for draft regulations originating from the Governor, and with the legislative body for drafts proposed by the DPRD. This harmonization authority granted to these two institutions can only be effectively exercised if the drafting of regional regulations is based on an academic manuscript. In realizing the crucial role of academic manuscript harmonization with statutory provisions, during the legislative drafting process—including regional regulations initiated by the proponent—there is a need to schedule harmonization meetings. At this stage, harmonization experts are needed, especially those with expertise in the legislation being formulated, which becomes the responsibility of the unit or agency assigned to the task. The urgency of the academic manuscript as a harmonization tool in the formation of regional regulations lies in its ability to align the intentions, goals, and interests of the government with the values embraced by society, for the sake of achieving justice, utility, and legal certainty. Moreover, academic manuscripts are essential to prevent overlap between regional regulations and higher-level legislation, as well as to ensure they do not conflict with public order or morality.

However, in practice, in 2016 the central government, through the Minister of Home Affairs, annulled as many as 3,143 provincial and district/city regional regulations across Indonesia, deeming them problematic. The government argued that these

regulations, among others, hindered regional economic growth, prolonged licensing procedures, obstructed ease of doing business, and conflicted with higher-level legislation (Hukumonline Legal Clinic, "Note: 7 Key Facts You Need to Know About the Annulment of Regional Regulations"). During the period from 2004 to 2009, the government also annulled 1,691 regional regulations. According to a research report by the Indonesian Center for Law and Policy Studies (PSHK) in 2011, the highest number of annulled regulations were those concerning retribution (1,066), followed by tax regulations (224), and licensing regulations (179). Other data from the PSHK report show that the highest number of annulments occurred in 2009, with a total of 830 regulations annulled that year. Legally, there are two mechanisms for annulling a regional regulation. The first is through judicial review, conducted by the Supreme Court. The legal basis for this mechanism is Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states: "The Supreme Court has the authority to adjudicate at the cassation level, to review regulations below the law against the law, and to exercise other powers granted by law." Thus, the material review of regional regulations against laws remains within the scope of duties and authorities of the Supreme Court as stipulated in Article 24A paragraph (1) of the Constitution. The second mechanism is through executive review, which is carried out by the Minister of Home Affairs or the Governor (as a representative of the Central Government). The legal basis for this mechanism is Article 251 paragraphs (1) and (2) of the Regional Government Law (UU Pemda), which state: "The Governor or Minister may submit a request for the annulment of a District/City Regional Regulation and Regent/Mayor Regulation, or a Provincial Regional Regulation and Governor Regulation that conflicts with higher-level legislation, public interest, and/or morality to the Supreme Court no later than 14 (fourteen) days after it is enacted."

Through the judicial review mechanism, a Provincial or Regency/City Regional Regulation (Perda) suspected of being in conflict with a Law can be challenged directly at the Supreme Court (Mahkamah Agung/MA), or submitted through the District Court that has jurisdiction over the applicant's location. If a Perda is deemed to be contrary to a Law, it may undergo a judicial review, and the Supreme Court will decide whether the Perda contradicts the Law and whether it should be revoked. Regional regulations are one of the types and hierarchies of legislation under the Law. One example of a Perda that was reviewed by the Supreme Court is Article 30 of the Special Regional Regulation of

Papua Province Number 6 of 2011 concerning the Gubernatorial and Vice Gubernatorial Election ("Papua Perda 6/2011").

Through Supreme Court Decision Number 16 P/Hum/2012 of 2012, the Court annulled Papua Perda 6/2011. The annulment of a regional regulation reflects symptoms of vertical and horizontal disharmony with related regulations, weaknesses in identifying legal issues and solutions that meet public legal needs, and even the potential abuse of power by officials in office. The cancellation of a regional regulation is not a simple matter, as the formation of such a regulation requires time, mechanisms, and substantial costs. Therefore, regional governments—including Regional Heads and Regional House of Representatives (DPRD) along with other stakeholders—must optimally carry out their respective functions and roles to produce truly high-quality regulations. The formation of regional regulations requires transparency from the government. This openness enables public involvement and participation from the drafting stage to the enactment of the regulation. Public participation in the formation of laws and regional regulations is reflected in Article 96 of Law Number 12 of 2011 on the Formation of Legislation, which states that the public has the right to provide oral or written input in the formation of laws and regulations. This input may be given through public hearings, field visits, public outreach, seminars, workshops, and discussions. The involvement of the public is further emphasized in Chapter XIV, Article 166 of Minister of Home Affairs Regulation Number 80, which stipulates that the public has the right to provide oral and/or written input in the formation of Regional Regulations (Perda), Regional Head Regulations (Perkada), Regional Head Decisions (PB KDH), and/or DPRD regulations. This input can be delivered through public hearings, working visits, outreach activities, seminars, workshops, or discussions. The term "public" refers to individuals or groups who can actively provide input on the substance of draft Perda, Perkada, PB KDH, and DPRD regulations. To facilitate public participation, each draft Perda must be easily accessible to the public. Regarding public participation in the preparation of academic manuscripts in the formation of draft regional regulations in Gorontalo Province, data collected by the researcher in three research areas shows that 35% of respondents had participated, 55% participated less, and 10% did not participate at all. This data illustrates that the formulation of draft regional regulations, which should be preceded by academic studies, has not fully reached various segments of society—in other words, the public has not been

fully involved in the decision-making or regional policy process. The enactment of a regional regulation should ideally be based on the legal needs of the community. According to the principle of protection (*asas pengayoman*), “every regulation must serve to provide protection to create public order.” Muin Fahmal asserts that in order to realize the desired legal substance of a regional regulation (*ius constitutum*), the regulation must be developed through a thorough examination of relevant laws and regulations and by involving the public in efforts to meet their needs, in order to understand the values that live in society. Thus, the importance of public participation in the formation of regional regulations becomes increasingly clear, as without optimal involvement, the resulting regulations may be difficult to implement and may not effectively reflect the legal needs of society.

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4 CONCLUSION

The essence of an academic manuscript as a guide in the formation of draft regional regulations has a strong foundation, namely that the manuscript is the product of in-depth research aimed at mapping the problems within society and formulating relevant solutions through regional regulation. Therefore, an academic manuscript is not merely an administrative document, but rather a result of thorough scientific analysis that reflects an understanding of social, economic, and cultural issues at the regional level. The process of forming a regional regulation should begin with a serious study of the problems at hand, and the academic manuscript plays a crucial role in this process. The manuscript presents data and information relevant to the issues occurring within society, so that the resulting regulation can genuinely offer appropriate solutions to meet community needs. Through a research-based approach, the academic manuscript provides a solid and objective foundation for forming regional regulations that are not only scientifically accountable but also uphold the principles of justice and public benefit. The importance of the academic manuscript as a requirement in forming regional regulations becomes increasingly evident, as it enables a more structured and clear harmonization between public needs and government policies. The academic manuscript also ensures that the resulting regulation is effective and relevant, considering that its substance must address the problems faced while taking into account the legal, social, economic, and cultural aspects occurring in the region. In addition, the academic manuscript functions as a communication bridge between the government and the public. When transparently prepared based on valid research, the manuscript enables the public to better understand the background and purpose of the regulation being drafted. This, in turn, encourages active public participation in the formation process, as people feel involved and given the opportunity to provide constructive input. Therefore, the academic manuscript is not just a prerequisite for the formation of regional regulations, but also a tool that ensures the resulting laws are of high quality and responsive to the dynamics of society. A well-prepared academic manuscript will result in regional regulations that not only fulfill the legal needs of the public but also promote sustainable regional development based on the principles of justice, benefit, and legal certainty.

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