

The Role Of The Legal Department Of The Regional Secretariat In The Establishment Of Local Legal Products

Rini Andriani^{*)} and Rakhmat Bowo Suharto^{**)}

^{*)} Civil Servant of the Regional Secretariat of Tegal Regency, Faculty of Law Postgraduate, Universits Islam Sultan Agung, e-mail: rinibundatisha@gmail.com

^{**)} Fakulty of Law, Universitas Islam Sultan Agung

Abstract

The purpose of this research know and analyze the roleThe Legal Division of the Tegal Regency Regional Secretariat in the formation of regional legal products within the Tegal Regency Government. The approach method used by the author in this research is a normative juridical approach, with a descriptive analytical research specification. The conclusion obtained in this study is that the role of the Legal Section of the Secretariat of Tegal Regency through the formation of regional legal products gets a very good predicate, while the inhibiting factors are the lack of human resources and the absence of structured and massive training for Legislation Subdivision Staff and Functional Positions. Legislators, and lack of interest due to the difficulty of getting credit points for promotions.

Keywords: Formation of Regional Legal Products; performance achievements; local regulation

1. Introduction

Article 1 paragraph (2), of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a State of Law". The state is obliged to carry out the development of national law which is carried out in a planned, integrated and sustainable manner in the national legal system that guarantees the protection of the rights and obligations of all Indonesian people.¹Fulfilling the needs of the community for good laws and regulations, and implemented through definite, standard and standard methods and methods that bind all authorized institutions in forming laws and regulations.

Law Number 23 of 2014² give a mandate to the Regional Government to stipulate Regional Regulations and other Regulations in the context of carrying out autonomy and assistance tasks in accordance with the aspirations of the community and regional needs as long as they do not conflict with applicable laws and regulations and general principles of good governance (AAUPB); To support this, a Regency/City Regional Apparatus is needed which consists of the assistant elements of the Regent/Mayor and the Regency/City Regional People's Representative Council in the administration of Government Affairs under the authority of the Regency/City Region.

¹ Supar Modeong dan Zudan Arif Fakrulloh, 2005, *Legal Drafting Berporos Hukum Humanis Partisipatoris*, PT.Perca, Jakarta, p. 13.

² Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 11 of 2020 concerning Job Creation.

Article 5 paragraph (2), Government Regulation Number 72 of 2018³ states that the Regional Apparatus in the Regency/City consists of the Regional Secretariat, DPRD Secretariat, Inspectorate, Service, Agency and District. The Tegal Regency Regional Secretariat is domiciled as a supporting element of the regional government in the field of policy making and administrative coordination of the implementation of regional apparatus duties and administrative services led by a Regional Secretary and directly responsible to the Regent. In writing this law, the author will examine further the role of the Legal Section of the Regional Secretariat.

In the process of forming laws and regulations, it also requires the presence of a legislative drafter or legal drafter in order to obtain a good legal product as regulated in Article 98 paragraph (1), Law Number 12 of 2011⁴. This has a logical consequence that laws and regulations must pay attention to certain foundations to maintain their existence.⁵

Article 1 Number 17, Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018⁶ states that Regional Legal Products are legal products in the form of regulations covering Regional Regulations or other names, - Regional Head Regulations, Regional People's Representative Council Regulations (DPRD) and some in the form of decisions including Regional Head Decrees, Regional People's Representative Council Decrees (DPRD), Decisions The leadership of the Regional People's Representative Council (DPRD) and the Decree of the Honorary Board of the Regional People's Representative Council (DPRD). The Tegal Regency Government has a relatively high productivity in the formation of regional legal products, based on the results of an interview with Dewi Sukmaningsih⁷.

Table 1
Number of Regional Legal Products

A. Local regulation		
No	Year	Amount
1	2018	7
2	2019	8
3	2020	17
B. Regent's Regulation		
No	Year	Amount

³ Government Regulation Number 72 of 2018 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatus.

⁴ Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations - Invitations.

⁵ Zein, Yahya Ahmad., 2016, *Legislative Drafting*, Thafa Media, Yogyakarta., p. 17.

⁶ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018 concerning Amendments to Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products.

⁷ Interview with the Head of Legal Documentation and Information Subdivision, on November 1, 2021.

1	2018	63
2	2019	67
3	2020	69
C. Regent's Decision		
No	Year	Amount
1	2018	1135
2	2019	1483
3	2020	1080

Since Government Regulation Number 59 of 2015⁸ratified based on the results of an interview with Tika Widyana Pratiwi⁹At the Tegal Regency Regional Secretariat, it was only in 2019 and 2021 that there was the appointment of the Functional Position of Legislative Designer which only amounted to 2 (two) people to assist in the formation of regional legal products, however - on the other hand it turns out that the functional position is not completely separated from structural tasks. This is because the Legislative Designer Functional Officer is currently still a Legislative Subdivision Staff at the Legal Section of the Tegal Regency Regional Secretariat.

The development of an increasingly democratic and critical society, requires that the process of forming regional legal products must have a strong scientific basis as the basic reason why a community problem in the region must be resolved by the formation of regional regulations, either improvements, revisions, or replacements. The formation of regional legal products that are not based on accurate data and information will only eliminate their usefulness in society. The author feels the need to conduct research on the role of the Legal Section of the Regional Secretariat of Tegal Regency and what are the inhibiting factors in carrying out their duties and functions in the formation of regional legal products within the Tegal Regency Government. With the intention ofTo find out and analyze the role ofThe Legal Section of the Tegal Regency Regional Secretariat in the formation of regional legal products within the Tegal Regency Government andexamine what obstacles can hinderThe Legal Section of the Tegal Regency Regional Secretariat in carrying out its duties and functions in the formation of regional legal products

2. Research Methods

The approach method used by the author in this research is a normative juridical approach or doctrinal legal research. Law is conceptualized as what is written in legislation (*law in book*).¹⁰ The research specifications used in this research are descriptive-analytical to describe a research result as well as the problems raised, so

⁸ Government Regulation Number 59 of 2015 concerning the Participation of Legislative Designers in the Formation of Legislation and Development.

⁹ Interview with the Functional Officer of the Legislative Drafting of the Regional Secretariat of Tegal Regency, 2 November 2021.

¹⁰ Aminuddin dan Zainal Asikin, 2006, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, p. 118.

that it is expected to provide a clear, detailed, and systematic picture. To obtain accurate and factual data, data sources are needed, namely primary data and secondary data. Primary data is obtained or collected by conducting field research. Secondary data is data obtained through library materials.¹¹

Secondary Data consists of Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials obtained from books, literature, papers, laws and regulations, and other data sources.¹²The author in compiling and analyzing the data obtained, used deductive reasoning with qualitative data analysis techniques. The reasoning used is intended to collect the facts obtained in order to make conclusions.¹³

3. Results And Discussion

Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia by upholding the moral values, ethics, character and noble personality of the nation, having faith and piety to God Almighty, and respecting diversity in the life of society, nation and state. and protect the dignity of every citizen.¹⁴The legal politics of local government administration is currently regulated by Law Number 23 of 2014 concerning Regional Government.¹⁵

Then Indonesia is also divided into several Regional Governments which with an autonomous system have the authority to regulate their own households through regional autonomy or decentralization policies with the aim of accelerating the implementation of development based on the interests of the local wisdom community in the area that is in line with national goals and does not violate laws and regulations. higher. To support the implementation of regional autonomy, it is necessary to have broad, real, and responsible authority in the regions in a proportional and fair manner, away from corruption, collusion and nepotism practices as well as a balance between central and regional government finances.¹⁶

This is stated in Article 18 Paragraph (2), of the 1945 Constitution of the Republic of Indonesia¹⁷Authority according to Prajudi Atmosudirdjo¹⁸, namely the power to take all actions in the field of public law, while the power to take action in the field of private law is called a right.

In public law, authority and authority are different things, authority is the power that is given and comes from the law and/or legislature, while that authority only concerns a certain part of the authority. Local governments in this case are given the

¹¹ Roni Hanitijo Sumitro, 2010, *Metodelogi Penelitian Hukum*, Ghalia Indonesia, Jakarta, p. 105

¹² Widayati, "Implementasi Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan Yang Partisipatif Dan Berkeadilan", *Jurnal Hukum Unissula*, Vol. 36, No. 2 (2019), p. 61

¹³ Saifuddin Azwar, 2005, *Metode Penelitian*, Pustaka Pelajar, Yogyakarta, p. 7.

¹⁴ Yuliantoro, "Penerapan Unsur Kealpaan Dalam Proses Penyidikan Tindak Pidana Kecelakaan Lalu Lintas", *Jurnal Hukum* Vol. 35 No.1 (2019), p.36-51.

¹⁵ Sri Kusriyah, "Politik Hukum Penyelenggaraan Otonomi Daerah Dalam Perspektif Negara Kesatuan Republik Indonesia", *Jurnal Pembaruan Hukum Unissula*, Vol 3, No. 1, (2016), p. 2-3.

¹⁶ HAW. Widjaja, 2014, *Otonomi Daerah dan Daerah Otonom*, Jakarta, PT. Raja Grafindo Persada, p. 8.

¹⁷ 1945 Constitution of the Republic of Indonesia.

¹⁸ Prajudi Admosudirjo, 1998, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, p.76.

authority to form regulations, namely legal products that are in accordance with their authority to regulate their own government affairs. The purpose of regional autonomy through decentralization will improve public welfare, public services and is expected to increase regional competitiveness. One of the instruments needed to realize this is Regional Law Products. Regional Legal Products according to Article 2 and Article 3, Regulation of the Minister of Home Affairs Number 80 of 2015¹⁹ can be in the form of regulations or stipulations.

The discourse on the formation of good regional legal products in line with the promulgation of Government Regulation Number 59 of 2015²⁰, Presidential Regulation Number 87 of 2014²¹ and Regulation of the Minister of Home Affairs Number 80 of 2015²², Local governments are challenged to meet the needs of the community so that an understanding of Regional Legal Products is needed which is carried out in a definite, standard, and standard way and method that binds all parties, including DPRD, Regional Government, Community and other stakeholders. The formation of good regional legal products is of course the responsibility of the Regional Government. As a state of law, the government has the task of organizing general welfare, where the state or government intervenes in managing the welfare of the people. This becomes an absolute or inevitable in a welfare state law (welfare state).²³

Underlying Tegal Regent Regulation Number 28 of 2021²⁴ The Head of the Legal Division has the main task of assisting the Regional Secretary through the Assistant for Government and People's Welfare in coordinating the formulation of legislation, reviewing legal products, providing legal assistance and Human Rights (HAM), publishing, documenting and informing legal products, and - licensing development. Based on the main tasks, functions and job descriptions above, it can be seen that related to the formation of regional legal products, the Head of the Legal Section of the Tegal Regency Regional Secretariat has the following duties: 1). Coordinate the formulation of regional legal products; 2). Coordinate the implementation of studies/study and evaluate the implementation of laws and regulations, as well as preparing materials for the preparation of draft regional regulations, both proposed by

¹⁹ Regulation of the Minister of Home Affairs Number 120 of 2018 concerning Amendments to Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products.

²⁰ Government Regulation Number 59 of 2015 concerning the Participation of Legislative Designers in the Formation of Legislation and Development.

²¹ Presidential Regulation Number 87 of 2014 concerning the Implementation of Law Number 12 of 2011 concerning the Establishment of Legislation.

²² Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products as amended by Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products.

²³ Iwan Sulistiyo, "Implementation of the Principle of Openness in the Process of Formation of Regional Regulations in the Context of Regional Autonomy in Kendal Regency", *Jurnal Daulat Hukum*, Vol.1 No.1 (2018), p. 192.

²⁴ Tegal Regent Regulation Number 28 of 2021 concerning Position, Organizational Structure, Duties and Functions and Work Procedures of the Regional Secretariat and the Secretariat of the Tegal Regency Regional People's Representative Council and Expert Staff of the Tegal Regent.

the executive and the legislature; 3). Coordinate the collection of laws and regulations and carry out publications, documentation and information on regional legal products that have been determined by the regional government; 4). Coordinate the implementation of research and provide initials or sign letters and legal products that will be submitted to the regent for the signing process according to their authority.

The hierarchical arrangement of laws and regulations has the consequence that a lower level statutory regulation may not conflict with higher statutory regulations. This is in line with the legal principle of *lex superior derogat inferiori* (a higher law trumps a lower law). This is intended to create legal certainty in the statutory system.²⁵

Hans Kelsen in his theory called the "Stufenbau des Recht" or legal hierarchy, that legal norms are tiered and layered in a hierarchy or arrangement, where a lower norm applies, originates, and is based on established norms. higher, the higher norm applies - sourced and based on a higher norm, and so on until a norm that cannot be traced further, namely the basic norm (Grundnorm).²⁶

The formation through the preparation of regional legal products within the framework of implementing regional government, according to the author, must receive attention from all implementing apparatus, because regional legal products such as Regional Regulations, Regulations and Decrees of Regional Heads, are very basic in government activities in carrying out government administration, which are the basis or reference in the administration of local government. Based on this, every regional law product must be prepared by taking into account the philosophical, sociological and juridical aspects, which must be fulfilled, so that the legal product will be effective in its application and will not conflict with public order or higher regulations. In every preparation of regional legal products, including aspects of authority and aspects of justice. Besides that,

Based on the data on regional legal products produced by the Legal Section of the Secretariat of Tegal Regency which the author obtained based on the results of interviews with Dewi Sukmaningsih²⁷, we can know that the Legal Section of the Tegal Regency Secretariat only facilitates or coordinates the formation of regional legal products, including: 1) Regional Regulations. 2) Regent's Regulation and 3). Regent's decision. Meanwhile, other regional legal products, namely Regency DPRD Regulations, Regional Head Decrees, DPRD Decisions, DPRD Leadership Decisions and DPRD Honorary Body Decisions have not been facilitated by the Legal Section of the Tegal Regency Regional Secretariat. Based on an interview with Tika Widyana Pratiwi²⁸

The author found the fact that at the Regional Secretariat of Tegal Regency, in 2019 and 2021 there was the appointment of the Functional Position of Legislative Designer, totaling 2 (two) people who assisted in the formation of regional legal

²⁵ Widayati, *Problem Ketidakpatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang*, Jurnal Pembaharuan Hukum Unissula, Vol. 4 No. 1 (2017), p.1-14.

²⁶ Maria Farida Indrati Soprpto, 1998, *Ilmu Perundang-undangan Dasar-Dasar dan Pembentukannya*, Kanisius, Yogyakarta, p. 25.

²⁷ Interview with the Head of Legal Documentation and Information Subdivision, on November 1, 2021.

²⁸ Interview with the Functional Officer of the Legislative Drafting of the Regional Secretariat of Tegal Regency, 2 November 2021.

products, but on the other hand it turned out that the functional position was not completely separated from the task. - Structural tasks because the Legislative Designer Functional Position is currently still a Legislative Subdivision Staff. Therefore, the author tries to compare the workload of the Legal Section of the Tegal Regency Secretariat, especially the Legislation Subdivision with the performance obtained with the 2019 Regional Government Agency Performance Report (LKjlp) of the Tegal Regency Regional Secretariat.

Table 3²⁹
Performance Rating Rating Scale

No	Performance Achievement Scale	Category
1	91% 100%	Very high
2	76% 90%	Tall
3	66% 75%	Currently
4	51% 65%	Low
5	≤50%	Very low

Table 4³⁰
Achievement of Targeted Performance Improved arrangement of laws and regulations

No	Work Indicator	Unit	2019			% 2018 Achievements	% of Achievements for the 2019 Strategic Plan Final Target
			Target	Realization	Achievements %		
1	Percentage of completed Perda Formation	%	100	100	100	100	100
2	Percentage of facilitated legal problem solving	%	100	300	300	115	300
Average Achievement Target Performance					200	107.5	

²⁹ Report on the Performance of Regional Government Agencies (LKjlp) of the Tegal Regency Regional Secretariat in 2019, p.49

³⁰ Regional Government Agencies Performance Report (LKjlp) of the Tegal Regency Regional Secretariat in 2019, p.60.

Based on the tables above, the author argues that the role of the Legal Section of the Secretariat of Tegal Regency in the formation of regional legal products with an average achievement of 107.5 which means getting a very good predicate, then with these parameters it can be said to be successful.

However, achievements must also be evaluated because of strategic issues, namely the problem of government regulations not being fully revealed in regional regulations or regional policies and the root cause of the problem is the weak coordination of implementation of government regulations, the absence of technical instructions and implementation instructions on new rules issued by the central government. and not yet optimal, which includes the percentage of the formation of regional regulations that have been resolved and the root cause of the problem is still a lack of manpower *legal drafter* in supporting the planning and implementation of regulations within the Tegal Regency Regional Secretariat. Although the performance achievement in the Legal Division of the Secretariat of Tegal Regency in its role in the formation of regional legal products has been good, it cannot be separated from obstacles that are still often encountered.

The author in an interview with Nurhapid Junaedi, who is the Head of the Legal Division, namely: *"the lack of legal personnel at the Tegal Regency Regional Secretariat which only amounts to a total of 10 (ten) people, where in the legislation sub-section there are only 4 (three) people, of course it affects the process of forming regional laws, even though the achievements in the 2019 strategic plan get the predicate very good, because in the formation of regional legal products, especially in the harmonization of regional regulations and regent regulations, there are no experts to review its deregulation, the Legislation Subdivision Staff which only amounts to 4 (four) people and 2 (two) of them have been appointed as Functional Positions Legislative Designer."*

Then the author also conducted an interview with Abadi Amanto³¹ "One of the obstacles in the formation of regional legal products is the absence of massive structured training to improve the ability of the Legislation Subdivision Staff as well as for other regional apparatuses so that this has implications for the quality in the formation of good regional legal products, thus giving the impact of still limited mastery. the substance and technicality of drafting legal products, the lack of Legislative Subdivision Staff in the Legal Section of the Tegal Regency Regional Secretariat also in the end made the Functional Position of Legislative Designer still given structural tasks in the context of assistance, so that if conditions like this were continued it would burden the Functional Position Legislators themselves." The existence of the Legal Section of the Regional Secretariat of Tegal Regency in order to contribute in carrying out its role in the process of forming regional legal products is very important, but there are still many obstacles, including:

- The lack of human resources in the Legal Section of the Regional Secretariat of Tegal Regency, especially in the Legislation Subsection, provides a high workload so that it

³¹ Interview with the Head of the Legislation Subdivision of the Legal Division of the Tegal Regency Regional Secretariat, 10 November 2021.

is feared that if it is not resolved immediately it will have an impact on the decline in future performance - on the other hand this will ultimately have an impact on the overlapping of main tasks and functions between the Functional Position of Legislative Designer and the main tasks and functions of the Legislative Subdivision staff.

- There is no massive structured training for Legislative Subdivision Staff and Legislative Designer Functional Positions, training is also needed for other Regional Apparatus Organizations in order to increase the ability to understand the principles of law formation in order to be able to produce quality regional legal products. .
- The cost of education for the Functional Position of Legislative Designer is high and the lack of interest in functional positions is due to the difficulty of getting credit points for promotions.

4. Closing

The role of the Legal Division of the Tegal Regency Secretariat through the formation of regional legal products with an average performance achievement of 107.5 % getting a very good predicate, in facilitating or coordinating the formation of regional legal products, including Regional Regulations, Regent Regulations and Regent Decrees. However, this achievement must be evaluated by taking into account strategic issues, among others, not yet fully stated in regional regulations and regional policies and the root cause of the weak coordination of implementation of government regulations. the absence of technical guidelines and implementation instructions on new regulations issued by the central government and not yet optimal, which includes the percentage of the formation of regional regulations that have been completed and the root cause of the problem is still a lack of personnel. *legal drafters*. Factors that hinder the Legal Department of the Regional Secretariat of Tegal Regency in the formation of regional legal products, among others, the lack of human resources will have an impact on the overlapping of main tasks and functions between the Functional Position of Legislative Designer and the main tasks and functions of the Legislation Subdivision staff. There is no structured, continuous and massive training for Legislative Subdivision Staff and Legislative Designer Functional Positions as well as high educational costs for Legislative Functional Positions and lack of interest in functional positions due to the difficulty of getting credit points for promotions.

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