

## **Legal Analysis of the Procedure for Forming Mayoral Regulations Outside of the Planning for Drafting Mayoral Regulations in the Semarang City Government**

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**Abstract.** This research aims to identify and analyze the procedures for formulating major regulations outside the planning, as well as the legal implications of its enactment. The method used is empirical juridical or empirical legal research. The specification applied is descriptive analytical. The data collection method is interviews and literature study legal materials. Based on the research, the formulation of Semarang Mayor Regulations outside the Planning of Mayor Regulations is carried out in accordance with following in the fifth dictum, which conditions APBD follow-ups, court decisions, BPK recommendations, higher-level mandates, directives from the Mayor of Semarang, and urgent conditions. In practice, procedures are not fully followed and the regulations more frequently make through coordination between the proposing regional apparatus and the legal division to assess the urgency of issuing major regulations. Then, the proposing regional apparatus submits a draft with explanation as the main considerations for making regulation. Then followed by the process of discussion, ratification or signing and promulgation in accordance with prevailing laws and regulations. The legal implications and consequences of enacting Semarang Mayor Regulations outside the planning include the possibility of annulment by the Governor and the potential for formal or material judicial review to the Supreme Court.

**Keywords:** Consequences; Legal; Regulations.

### **1. Introduction**

Indonesia is a country based on law, this statement has been firmly formulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The Republic of Indonesia is a country based on law". This constitutional provision means that the Unitary State of the Republic of Indonesia

in carrying out state activities must be based on law.<sup>1</sup> The consequence of this statement is that every action taken by the government is based on law. A state based on the rule of law dictates that in carrying out its duties, the government must comply with the law, not the law complying with the government.<sup>2</sup> Having a legal basis ensures that the government carries out its duties and authorities with legal certainty and clear guidance in carrying out state activities. Furthermore, in practice, it prevents arbitrary actions by the government.

To ensure legal certainty in state activities, the existence of a legal framework as a foundation is essential. The creation of legal regulations represents a concrete form of state intervention in ensuring the welfare of the people. Laws must be consciously created by the regulatory body.<sup>3</sup> Legislation in the formal or narrow sense refers to decisions made by a regulatory body. However, legislation in the material or broad sense refers to any decision made by an authorized state official (overheidsbesluit) that establishes an objective legal rule.<sup>4</sup> In English, legislation is defined as "regulation." In Black's Laws Dictionary, legislation is defined as "the act of regulating; a rule or order prescribed for management or government; a regulating principle."<sup>5</sup>

The formation of Indonesian legislation has been regulated in Law Number 12 of 2011 concerning the Formation of Legislation as amended twice, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. The formation of legislation was formed with the consideration that the formation of legislation is a requirement in the framework of national legal development reform which can be realized if supported by a definite, standardized and standardized method that binds all institutions authorized to create legislation.<sup>6</sup> A statutory regulation can be said to be good if it contains three foundations, namely philosophical, sociological and juridical.<sup>7</sup> According to Article 1 number 1 of Law Number 12 of 2011, "The formation of statutory regulations is the creation of statutory regulations which includes the stages of planning, drafting, discussion, ratification or determination and promulgation."

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<sup>1</sup>Iwan Sulistiyo, Widayati, Sri Kusriyah, Implementation of the Principle of Openness in the Process of Forming Regional Regulations in the Framework of Regional Autonomy in Kendal Regency, *Daulat Hukum*, Vol 1. No. 1, 2018, pp. 191-200.

<sup>2</sup>Ridwan HR, *State Administrative Law*, Rajawali Press, Jakarta, 2011, p. 21.

<sup>3</sup>Ibid.

<sup>4</sup>Prajudi Atmosudirjo, *State Administrative Law*, Ghalia Indonesia, Jakarta, 1988, p. 38.

<sup>5</sup>Henry Campbell Black, *Black Laws Dictionary*, West Publishing CO, St Paul Minnesota, 1979, p. 1156.

<sup>6</sup>Jimly Asshiddiqie, *Regarding the Law*, Constitution Press, Jakarta, 2006, (hereinafter abbreviated as Jimly Asshiddiqie I) p.255.

<sup>7</sup>Rosjidi Ranggawidjaja, *Introduction to Indonesian Legislation*, Mandar Maju, Bandung, 1998, p. 80.

Legislation is essentially a written and generally binding legal norm. Legislation is created and enacted by authorized state institutions or officials in accordance with procedures established in the legislation. Legislation in Indonesia is structured hierarchically and sequentially. Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation regulates the types and hierarchy of legislation, which consist of:

- a. The 1945 Constitution of the Republic of Indonesia.
- b. Decree of the People's Consultative Assembly.
- c. Law/Government Regulation in Lieu of Law.
- d. Government regulations.
- e. Presidential decree.
- f. Provincial Regional Regulations
- g. Regency/City Regional Regulations.

It should be noted that Indonesia does not only grant the Central Government the authority to create and regulate laws and regulations. Regional governments, both provincial and district/city, are also given the authority to create and enforce regulations in accordance with the spirit of regional autonomy. Regional governments are authorized to regulate and manage their own governmental affairs and functions according to the principles of autonomy and assigned tasks.<sup>8</sup>Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia states that "Regional Governments have the right to establish regional regulations and other regulations to implement autonomy and assistance tasks." The authority to form regulations here is not only related to regional regulations but also includes regulations formed by regional heads. In line with this statement, Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation explains that the law recognizes the types of regulations formed by the Regent or Mayor as long as the regulations are formed on the basis of orders from higher legislation or are formed based on authority.

Mayoral regulations are regulations established by the mayor based on his authority in order to implement regional autonomy. The formation of mayoral regulations is regulated in detail in the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products as amended by the Regulation of the Minister of Home Affairs Number 120 of 2018 concerning amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products. In implementing

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<sup>8</sup>Ni'matul Huda, Indonesian Constitutional Law, Rajawali Pers, Jakarta, 2015, (hereinafter referred to as Ni'matul Huda I) p. 325.

the formation of mayoral regulations, the same stages are referred to in the formation of statutory regulations. The stages of the formation of mayoral regulations consist of planning, drafting, discussion, ratification or determination and promulgation. The process of forming mayoral regulations must pay attention to several aspects, namely the procedural aspect, substance and authority that must be fulfilled.<sup>9</sup>

In the formation of mayoral regulations, the planning aspect is one of the stages that must be fulfilled in the formation of legislation. Article 19 of the Minister of Home Affairs Regulation Number 80 of 2015 concerning the formation of Regional Legal Products states:

- (1) Planning the preparation of regional regulations and DPRD regulations is the authority of and is adjusted to the needs of each institution, commission or agency.
- (2) Planning for the preparation of regulations as referred to in paragraph (1) is prepared based on orders from higher statutory regulations or based on authority.
- (3) The planning for the preparation as referred to in paragraph (1) is determined by a decision of the leadership of the respective institution, commission or agency for a period of 1 (one) year.
- (4) The planning for the preparation of regulations that have been determined by decision of the leadership of the respective institutions, commissions or agencies as referred to in paragraph (3) may be supplemented or reduced.

Furthermore, Semarang City Regional Regulation Number 4 of 2021 concerning the Formation of Regional Legal Products also states that planning aspects are involved in the formation of mayoral regulations. Article 16 of Semarang City Regional Regulation Number 4 of 2021 concerning Procedures for the Formation of Regional Legal Products states:

- (1) Planning the preparation of mayoral regulations and DPRD regulations is the authority of and is adjusted to the needs of each institution or agency.
- (2) Planning for the preparation of regulations as referred to in paragraph (1) is prepared based on orders from higher statutory regulations or based on authority.
- (3) The planning for the preparation as referred to in paragraph (1) is determined by a decision of the leadership of the respective institution, commission or agency for a period of 1 (one) year.

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<sup>9</sup>Rustam, Legal Analysis of the Establishment of Regional Head Regulations Without Going Through a Facilitation Process, Collaborative Science, Vol 6. No. 12, 2023, p. 2096

(4) The planning for the preparation of regulations that have been determined by decision of the head of the respective institution or agency as referred to in paragraph (3) may be supplemented or reduced.

It is necessary to understand based on the explanation of Article 19 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products and Article 16 of the Semarang City Regional Regulation Number 4 of 2021 concerning Procedures for the Formation of Regional Products, it states that in the formation of the planning for the preparation of mayoral regulations, it is adjusted to the needs and is prepared for a period of 1 (one) year as determined by the mayoral decree. The planning for the preparation of mayoral regulations can also be added or reduced by making changes to the planning decision for the preparation of the mayoral regulations.

Based on the author's observations, the Semarang City Government in 2024 has had a Semarang Mayor Decree Number 180 /1162 of 2023 concerning the Determination of the Planning for the Preparation of the Semarang Mayor's Regulations in 2024. The number of plans for the preparation of mayoral regulations in 2024 amounted to 123 (one hundred and twenty-three) draft mayoral regulations. However, the number of Semarang Mayoral Regulations issued in 2024 amounted to 67 (sixty-seven). Based on the 67 (sixty-seven) Semarang Mayoral Regulations, there are still several regulations issued outside the planning for the preparation of mayoral regulations that have been determined.

The author's observations include several Semarang Mayoral Regulations issued outside the planning process in 2024. Examples include Semarang Mayoral Regulation No. 39 of 2024 concerning the Implementation of Quality Tourism, and Semarang Mayoral Regulation No. 55 of 2024 concerning Guidelines for Implementing Support for Improving Education Quality through the Independent Learning Program. These two mayoral regulations were issued outside the established planning process.

Several irregularities occurred in the process of establishing mayoral regulations, neglecting the planning process. However, it is important to note that the formation of legislation must meet both formal and material requirements. The material aspect relates to the content of the legislation, while the formal aspect relates to the process of establishing the legislation. Planning is crucial in establishing mayoral regulations, as without proper planning, the formation of mayoral regulations can become unmanageable. Without thorough planning, the formation of mayoral regulations will be unaccountable and non-transparent, potentially leading to inconsistencies in the creation of mayoral regulations.<sup>10</sup>

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<sup>10</sup>Hery Yulianto, Legal Study of the Formation of Omnibus Law Regulations, Law and Justice, Vol.11 No.1, 2024, p. 3

Regarding the drafting of the Semarang Mayoral Regulation, the author has observed a discrepancy in the process, as it did not go through the planning stage. The lack of planning, despite the draft Mayoral Regulation being issued as a Mayoral Regulation, naturally creates a discrepancy between the regulation-making process and the implementation of existing law.

## 2. Research Methods

The approach used in this research is empirical juridical. The empirical juridical approach, or empirical legal research, is an approach that examines the legal reality that exists within society.<sup>11</sup> Empirical legal research is an approach used to examine legal aspects within a social phenomenon within society. In this study, the author uses a juridical method to analyze legislation or other legal materials. However, the author uses a sociological legal approach to understand the social context in which the law applies. The specifics of this research are descriptive and analytical, namely presenting the provisions contained in legislation and then linking them to legal theories and the practice of implementing positive law related to the problem under study.<sup>12</sup> Descriptive analysis is a method used to describe a condition or situation that is currently occurring with the aim of providing data related to the research object so that it can explore things that are ideal, so that they can then be analyzed based on legal theory or applicable laws and regulations.<sup>13</sup>

## 3. Results and Discussion

### 3.1. Procedures for the Formation of Mayoral Regulations Outside the Planning for the Preparation of Mayoral Regulations

In the preparation of legislation, especially the formation of mayoral regulations, there are established procedures and guidelines. The legal basis for the formation of legislation in Indonesia has been regulated in Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Furthermore, regarding the formation of mayoral regulations, it has been regulated in more detail in Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products as amended by Regulation 120 of 2018 concerning Amendments to Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products and also in Semarang City Regional

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<sup>11</sup>Zainuddin Ali, Legal Research Methods, 11th edition, Sinar Grafika, Jakarta, 2009,

<sup>12</sup>Roni Hanitijo Soemitro, Legal Research Methods and Statisticians, Ghalia Indonesia, Jakarta, 1990, pp. 97-98

<sup>13</sup>Zainudin Ali, op.cit., p. 223

Regulation Number 4 of 2021 concerning Procedures for the Formation of Regional Legal Products.

According to Article 1 number 1 of Law Number 12 of 2011 concerning the Formation of Legislation, it states that the Formation of Legislation is the creation of legislation that includes the stages of planning, drafting, discussion, ratification or determination, and promulgation. Based on this statement, all aspects must be passed in the formation of legislation, including the planning aspect. In the formation of mayoral regulations, the planning aspect must also not be overlooked in its implementation. Provisions related to the planning of mayoral regulations have been regulated in Article 19 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, which states as follows:

Article 19

- (1) Planning the preparation of regional regulations and DPRD regulations is the authority of and is adjusted to the needs of each institution, commission or agency.
- (2) Planning for the preparation of regulations as referred to in paragraph (1) is prepared based on orders from higher statutory regulations or based on authority.
- (3) The planning for the preparation as referred to in paragraph (1) is determined by a decision of the leadership of the respective institution, commission or agency for a period of 1 (one) year.
- (4) The planning for the preparation of regulations that have been determined by decision of the leadership of the respective institutions, commissions or agencies as referred to in paragraph (3) may be supplemented or reduced.

In addition, provisions related to the planning of mayoral regulations are also regulated in Article 16 of Semarang City Regional Regulation Number 4 of 2021 concerning Procedures for the Formation of Regional Legal Products, which states the following:

Article 16

- (1) Planning the preparation of mayoral regulations and DPRD regulations is the authority of and is adjusted to the needs of each institution or agency.
- (2) Planning for the preparation of regulations as referred to in paragraph (1) is prepared based on orders from higher statutory regulations or based on authority.
- (3) The planning for the preparation as referred to in paragraph (1) is determined by a decision of the leadership of the respective institution, commission or agency for a period of 1 (one) year.

(4) The planning for the preparation of regulations that have been determined by decision of the head of the respective institution or agency as referred to in paragraph (3) may be supplemented or reduced.

The planning for the Semarang Mayoral Regulation is formulated and stipulated through a Mayoral Decree. In practice, planning aspects are often neglected or neglected due to several considerations, including the Mayor's mandate to support the implementation of the vision and mission of running the government. Another reason is the desire to fill legal gaps caused by the implementation of higher-level legislation. Furthermore, it is also the need to meet the public's need for regulations based on public aspirations.<sup>14</sup> The Semarang City Government has had a decree of the Mayor of Semarang related to the Planning of Mayoral Regulations from 2022 to 2025. Meanwhile, from 2015 to 2021, the Semarang City Government in forming mayoral regulations can be said to have neglected the planning aspect. Based on the Planning for the Preparation of Semarang Mayoral Regulations, it is known that what is in the planning of mayoral regulations is not necessarily realized into Mayoral Regulations. In 2025, the Semarang City Government has had a Decree of the Mayor of Semarang Number 100.2 / 1216 of 2024 concerning the Planning for the Preparation of Mayoral Regulations in 2025. Planning for the process of preparing mayoral regulations should be based on the Decree of the Mayor of Semarang. The contents of the dictum of the Decree of the Mayor of Semarang are as follows:

FIRST: Planning for the Preparation of the 2025 Semarang Mayor's Regulation, with a list as stated in the Attachment to this Decree.

SECOND : The planning for the preparation of the Semarang Mayor's Regulation as referred to in the FIRST Dictum, can be changed in the form of:

- a. additional proposals for the preparation of the Semarang Mayor's Regulation; and/or
- b. elimination of the proposed drafting of the Semarang Mayor's Regulation.

THIRD: Additional proposalsThe preparation of the Semarang Mayor's Regulation as referred to in the SECOND Dictum letter a, is submitted by the proposing unit through a request for permission/approval from the Echelon II Official of the proposing unit to the Mayor of Semarang.

FOURTH : Deletion of proposalThe preparation of the Semarang Mayor's Regulation as referred to in the SECOND Dictum letter b, can be carried out by:

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<sup>14</sup>Interview with Moh Issamsudin, Head of the Legal Section of the Semarang City Regional Secretariat, October 3, 2025

- a. the proposing unit, by submitting a request for deletion from the Echelon II Official of the proposing unit to the Mayor of Semarang City; or
- b. The Mayor of Semarang, in the context of fostering the planning of the preparation of the Semarang Mayor's Regulation, in terms of the preparation of the Semarang Mayor's Regulation, has not experienced progress in accordance with the target completion time.

FIFTH : Under certain circumstances, the Proposing Unit may propose a draft Mayoral Regulation outsidePlanning for the Preparation of Semarang Mayor's Regulations for the following reasons:

- a. Regulations regarding follow-up regarding the Semarang City Regional Revenue and Expenditure Budget;
- b. Follow-up on the implementation of decisions from judicial institutions;
- c. Follow-up on findings/recommendations from the Audit Board which must be completed immediately according to the recommendation deadline;
- d. The mandate of higher laws and regulations issued after this Decree is enacted;
- e. Follow-up to the direction of the Mayor of Semarang; or
- f. Follow-up on handling extraordinary events or disasters that must be resolved immediately.

SIXTH: The Proposing Unit for the preparation of the Semarang Mayor's Regulation as stipulated in this Decree is required to submit the time for the preparation of the Mayor's Regulation to the Head of the Legal Section of the Semarang City Regional Secretariat no later than the end of the first semester of 2025.

SEVENTH : In the event that the proposing unit has not submitted the time limit by the specified deadline submission of the proposed Semarang Mayor's Regulation, an evaluation will be carried out on the proposed Semarang Mayor's Regulation.

EIGHTH : All costs arising as a result of the stipulation of this Decree shall be charged to the Semarang City Regional Revenue and Expenditure Budget for the 2025 Fiscal Year.

NINTH : This decision shall come into effect on the date of stipulation.

It should be noted that the Mayor's decision is effective from December 30, 2024, which means that from that date the preparation of the Semarang Mayor's Regulation in 2025 has been based on the Mayor's decision.

Then, related to the procedure for forming the Semarang Mayor's Regulation which is not included in the Planning for the Preparation of the Semarang Mayor's Regulation, the author has conducted interviews with the Head of the Legal Section of the Semarang City Regional Secretariat and the drafter of legislation related to the process of forming the mayor's regulation which is not included in the planning for the preparation of the mayor's regulation. Basically, the planning of the mayor's regulation serves as an important instrument in the formation of the mayor's regulation. According to Moh. Issamsudin as the Head of the Legal Section of the Semarang City Regional Secretariat, the function of the mayor's regulation planning is to guide the initiating regional apparatus in understanding and knowing the need for the preparation of the mayor's regulation. Aspects of the needs related to the development of the regulation can be formulated early based on the need for follow-up to the existing regulation.<sup>15</sup> In addition, when over time there are urgent matters that must be met by a regulation in the form of a mayoral regulation, why not then create a mayoral regulation outside the planning of the preparation of the mayoral regulation. Reza Aulia Hakim as the first drafter of legislation in the Legal Section of the Semarang City Regional Secretariat said that the planning of the Semarang mayoral regulation is the most fundamental process in the preparation of the mayoral regulation, because the planning really reflects the direction and objectives as well as the achievement targets related to the mayoral regulation.

Furthermore, regarding the process of forming the mayoral regulation, the Mayor's Decree regarding the planning of the preparation of the Semarang Mayoral Regulation has basically provided space for the formation of mayoral regulations outside the planning of the mayoral regulation. Normatively, the formation of the Semarang Mayoral Regulation must be in accordance with the planning and in its formation follow the established plan. There are procedures that must be followed by the initiating regional apparatus regarding the formation of the mayoral regulation. First, if it is not included in the planning of the preparation of the Mayoral Regulation but is not urgent and falls within the permitted provisions as referred to in the third dictum, namely additions related to proposals by implementing changes to the planning of the preparation of the Semarang mayoral regulation as stated below:

THIRD : Additional proposals The preparation of the Semarang Mayor's Regulation as referred to in the SECOND Dictum letter a, is submitted by the proposing unit through a request for permission/approval from the Echelon II Official of the proposing unit to the Mayor of Semarang.

In practice, in provisions like this, the initiating regional apparatus usually submits a proposal to be implemented regarding changes to the Semarang Mayor's Decree

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<sup>15</sup>Interview with Moh Issamsudin, Head of the Legal Section of the Semarang City Regional Secretariat, October 3, 2025

regarding the Planning for the Preparation of Semarang Mayor's Regulations while preparing the completeness of the draft and administration for the formation of the mayor's regulations.<sup>16</sup>

Under certain circumstances, it is also possible to implement the formation of mayoral regulations outside the planning without the need for changes to the Semarang Mayor's Decree regarding the planning of the Preparation of the Formation of Semarang Mayoral Regulations. The fifth dictum regarding provisions outside the planning has provided space regarding the conditions permitted to form mayoral regulations outside the planning with the following provisions:

FIFTH : Under certain circumstances, the Proposing Unit may propose a draft Mayoral Regulation outsidePlanning for the Preparation of Semarang Mayor's Regulations for the following reasons:

- a. Regulations regarding follow-up regarding the Semarang City Regional Revenue and Expenditure Budget;
- b. Follow-up on the implementation of decisions from judicial institutions;
- c. Follow-up on findings/recommendations from the Audit Board which must be completed immediately according to the recommendation deadline;
- d. The mandate of higher laws and regulations issued after this Decree is enacted;
- e. Follow-up to the direction of the Mayor of Semarang; or
- f. Follow-up on handling extraordinary events or disasters that must be resolved immediately.

The fifth dictum provides that provisions a through f provide space for the formation of mayoral regulations outside of planning. The reasons as stated in letters a through f are the reasons for the formation of mayoral regulations outside of planning.

Regarding the practice of drafting Semarang Mayoral Regulations outside of the planned regulations, Moh Issamsudin, Head of the Legal Division, stated that the initiating Regional Apparatus coordinates with the Legal Division. Coordination is conducted to determine the extent to which the regulation is needed to be realized.<sup>17</sup>In line with this, Zsazsa Dordia, as the first drafter of legislation in the legal section, also stated that most of the formation of Semarang Mayoral Regulations outside of the planning that occurred was due to the development of regulations at the central government level that needed to be addressed at the

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<sup>16</sup>Interview with Reza Aulia Hakim, First Expert Legislative Drafter in the Legal Section of the Semarang City Regional Secretariat, October 3, 2025

<sup>17</sup>Interview with Moh Issamsudin, Head of the Legal Section of the Semarang City Regional Secretariat, October 3, 2025

regional level to avoid a legal vacuum with the formation of mayoral regulations. The formation of Semarang Mayoral Regulations outside of the Planning The preparation of Semarang Mayoral Regulations can be formed as a follow-up to support the program, both the vision and mission of the Mayor of Semarang.<sup>18</sup> Coordination is also carried out to align the programs and orders from the Mayor of Semarang to the Initiator and related parties in relation to the readiness and actions required for the formation of the Mayor's regulations.<sup>19</sup>

### **3.2. The Legal Consequences and Effects of the Promulgation of Mayoral Regulations Outside the Planning for the Preparation of Mayoral Regulations**

The formation of a Semarang Mayoral Regulation outside the planning of the Semarang Mayoral Regulation certainly has its own legal consequences. It can be said that the formation of a mayoral regulation must go through the stages of planning, drafting, discussion, ratification or stipulation, and promulgation. If these stages are not passed formally, the formation of the legislation will be imperfect. Although the provisions in the Semarang Mayoral Decree concerning the Planning of the Preparation of the Semarang Mayoral Regulation have provided space related to existing provisions when it is necessary to form a mayoral regulation outside the planning of the mayoral regulation. The fifth dictum has explained the provisions and conditions under which the Semarang Mayoral Regulation can be formed outside the planning.

The process of formulating a Mayoral Regulation must consider several aspects, including procedure, substance, and absolute authority. Furthermore, the formulation of the Semarang Mayoral Regulation must not conflict with higher-level laws, public interest, and morality. Based on these considerations, the formulation of a Mayoral Regulation outside of the planned framework will undoubtedly have legal consequences that could impact its implementation.

It is important to note that the formal requirements for the creation of mayoral regulations outside of the planning process are not met. Although there are provisions that can be waived in the planning process, does every mayoral regulation issued outside of the planning process meet the aspects of the fifth dictum? The implementation of these provisions is still quite broad and can lead to potential conflicts of interest. This is where the legal department plays a role in filtering the provisions for the creation of mayoral regulations outside of the planning process. It is important to note that when a mayoral regulation does not meet the formal requirements for its creation, it indirectly conflicts with higher regulations, namely Law Number 12 of 2011 concerning the Formation of Legislation and Regulation of the Minister of Home Affairs Number 80 of 2015

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<sup>18</sup>Interview with Zsazsa Dordia, First Expert Legislative Drafter at the Legal Section of the Semarang City Regional Secretariat, October 3, 2025.

<sup>19</sup>Interview with Moh Issamsudin, Head of the Legal Section of the Semarang City Regional Secretariat, October 3, 2025.

concerning the Formation of Regional Legal Products.<sup>20</sup> Furthermore, any Mayoral Regulation issued without proper planning will also be vulnerable to legal consequences. Furthermore, the Semarang Mayor's Decree on Planning for the Preparation of the Semarang Mayoral Regulation was only issued in 2022, making the formation of the Semarang Mayoral Regulation from 2015 to 2021 highly vulnerable to potentially unfavorable legal consequences and repercussions.

Regarding the legal consequences that can occur when the mayor's regulations are formed outside of the planning, the following are possible:

1) Cancellation of Semarang Mayor's Regulation by the Governor of Central Java.

The Mayor's Regulation that has been promulgated if there is a discrepancy and there is a contradiction in its implementation can be canceled by the Governor as the representative of the Central Government. Provisions related to the cancellation of the mayor's regulation by the governor have been regulated in general in Article 251 of Law Number 23 of 2014 concerning Regional Government. Article 251 paragraph (2) explains that the mayor's regulation that is contrary to the provisions of higher laws and regulations, public interest, and/or morality is canceled by the Governor as the representative of the central government. Then it is emphasized in paragraph (3) stating that if the governor does not cancel the mayor's regulation that is contrary to higher provisions, public interest and/or morality, the Minister of Home Affairs will cancel the Mayor's Regulation. Cancellation of the Mayor's Regulation by the Governor as the Representative of the Central Government is determined by a Governor's Decree. After the Governor's decision regarding cancellation in accordance with Article 251 paragraph (6) of Law Number 23 of 2014 concerning Regional Government, the Mayor must stop the implementation and revoke the canceled Mayor's Regulation within 7 days. If the Regional Government Administrator does not accept or cannot accept it, in accordance with Article 251 paragraph (8) of Law Number 23 of 2014, it explains that the Mayor can submit an objection to the Minister no later than 14 (fourteen) days after the decision to cancel the Mayor's Regulation is received.

More detailed provisions regarding the technicalities of canceling the Mayor's Regulation have been regulated in Articles 142 to 160 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products as amended by the Regulation of the Minister of Home Affairs Number 120 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products in implementing the cancellation is carried out after receiving recommendations from the review team. The review team is tasked with reviewing whether the mayor's regulation is in accordance or not in accordance with the results of facilitation, higher laws and regulations, public interest and/or morality.

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<sup>20</sup>Rustam, op. Cit. p. 2096

Based on Article 145 paragraph (1) of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products as amended by the Regulation of the Minister of Home Affairs Number 120 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products that cancellation can be implemented based on proposals from any person, regional government, and/or other agencies and can also come from the findings of the Mayor's regulation cancellation team. It is also regulated that if the Mayor does not accept the cancellation, he can file an objection to the Minister of Home Affairs along with the reasons for the objection. If the objection is granted, it will imply that the Mayor's Regulation remains in effect and if it is partially granted, the provisions that were granted remain in effect, and also if the objection is not accepted automatically the mayor's regulation does not have binding legal force. If the Regional Government still enforces the regulation that has been canceled, sanctions can be imposed in the form of administrative sanctions and/or sanctions to postpone the evaluation of the draft mayoral regulation.

Thus, it can be seen that the main reason for the cancellation of the Semarang Mayoral Regulation is due to provisions that conflict with higher-level laws and regulations, the public interest, and/or morality. The Governor's cancellation is based on the review team's assessment of the mayoral regulation, which determines whether the regulation aligns with the facilitation results, higher-level laws and regulations, the public interest, and/or morality. The facilitation results are also one of the requirements considered in the formulation of the mayoral regulation.

Formal testing is testing of the mayor's regulations regarding the fulfillment of the process or procedures for forming the mayor's regulations.<sup>21</sup>It can be said that formal testing of the Semarang Mayor's Regulation can occur when in its formation it is felt that the formation process is contrary to the provisions and procedures in the formation of statutory regulations. In this case, if the formation of the Mayor's Regulation is contrary in relation to the process or procedure to the provisions of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation and Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products as amended by 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 Formation of Regional Legal Products.

Then, material testing is testing of the mayor's regulations regarding the content of a mayor's regulation which is deemed to be in conflict with higher statutory

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<sup>21</sup>Ibid p. 103

regulations.<sup>22</sup> In the event of a conflict between the content of the mayoral regulation and the content of the higher-level legislation, a material review may be conducted in the Supreme Court. The material review refers to the paragraphs, articles, and/or sections of the mayoral regulation deemed to conflict with the higher-level legislation. This includes the appendices to the mayoral regulation.

In the formation of the Semarang Mayor's Regulation outside the Planning for the Preparation of the Mayor's Regulation, it is very possible to conduct a formal review considering that its formation does not go through the planning stages as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation where the formation of legislation consists of planning, preparation, discussion, determination or ratification and promulgation. Although in its implementation there is still a possibility of material testing, when talking about the planning aspect it will be very possible to conduct a formal review. Moreover, the Mayor's Regulation was issued in 2015 after the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products was issued until 2021 where provisions related to the planning of the mayor's regulation have been regulated and the Semarang City Government does not yet have a planning instrument for the Semarang Mayor's Regulation. In 2022 until now, 2025, it has had a planning instrument. In the Semarang Mayor's Decree concerning the Planning for the Preparation of the Mayor's Regulation, the fifth dictum regulates as follows:

**FIFTH** : Under certain circumstances, the Proposing Unit may propose a draft Mayoral Regulation outsidePlanning for the Preparation of Semarang Mayor's Regulations for the following reasons:

- a. Regulations regarding follow-up regarding the Semarang City Regional Revenue and Expenditure Budget;
- b. Follow-up on the implementation of decisions from judicial institutions;
- c. Follow-up on findings/recommendations from the Audit Board which must be completed immediately according to the recommendation deadline;
- d. The mandate of higher laws and regulations issued after this Decree is enacted;
- e. Follow-up to the direction of the Mayor of Semarang; or
- f. Follow-up on handling extraordinary events or disasters that must be resolved immediately.

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<sup>22</sup>Ibid.

Although space has been provided for its implementation, can this dictum be equated with the planning aspect? Point e, in particular, will be difficult to prove without reliable evidence. Therefore, if the Semarang Mayor's Regulation, which has been issued, is deemed detrimental to certain parties due to improper procedures or because it can easily be formally challenged in the Supreme Court, the question arises.

Furthermore, if a party feels that the material contained in the regulation conflicts with higher-level legislation, even though its formulation complies with the provisions of the fifth dictum concerning the Planning of the Preparation of Semarang Mayoral Regulations, which allows for formulation outside of the planning, the party can file a request for material review with the Supreme Court. This is because, although the formulation does not comply with the planning, due to a lack of careful consideration, some of the material contained in the regulation may conflict with higher-level legislation.

In formal or material review by the Supreme Court, the decision on the review is final and legally binding. Final means that the Supreme Court's decision immediately becomes legally binding upon its pronouncement, and no further legal action can be taken. The final nature of a Supreme Court decision also includes binding legal force (final and binding). The primary legal consequence is that no other legal action can be taken against the decision. The binding nature also applies to the *erga omnes* nature, meaning the decision applies to all citizens residing in the area.<sup>23</sup>

In response to the Supreme Court's decision, if a Mayor's regulation is declared to be in conflict with higher statutory regulations within 90 (ninety) days after the decision is made, the mayor's regulation will no longer have legal force. The Mayor must follow up by creating a new mayoral regulation as a result of this Supreme Court decision.<sup>24</sup>

#### 4. Conclusion

The procedure for establishing a Semarang Mayoral Regulation outside of the planning period is to adhere to the planning provisions contained in the Semarang Mayoral Decree concerning the Planning for the Preparation of the Semarang Mayoral Regulation. These provisions are contained in the Fifth Dictum, including the establishment of regulations for follow-up actions related to the Semarang City Regional Revenue and Expenditure Budget, follow-up on the implementation of decisions from judicial institutions, Follow-up on findings/recommendations from the Audit Board that must be completed immediately according to the recommendation deadline, Mandates from higher laws and regulations issued after the Decree is enacted, Follow-up on the directions of the Mayor of Semarang,

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<sup>23</sup>Dhahana Putra et. al op. Cit. p 109.

<sup>24</sup>Ibid.

and follow-up on handling extraordinary events or disasters that must be resolved immediately. When there is a need for a Semarang Mayoral Regulation outside of the planning period, the proposing Regional Apparatus submits a coordination with the Legal Section. Then, coordination and communication are carried out to determine the extent of the urgency of the draft regulation to be formed. Then the Regional Apparatus submits a draft accompanied by information/explanations as the main ideas of the reasons for establishing the Semarang mayoral regulation. After that, the preparation and discussion are carried out in accordance with the provisions of the legislation. Then, during the discussions, facilitation was conducted, although not optimally, due to the need and time constraints involved in developing the Semarang mayoral regulations. Following the discussions, the Mayor of Semarang ratified the regulations, which concluded with an invitation by the Semarang City Regional Secretary.

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