

# Legal Construction of Academic Draft Obligations in the Formation of Regional Regulations

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**Abstract:** This study examines the legal construction of the obligation to prepare Academic Drafts in the process of forming regional regulations in Indonesia. Academic texts have a strategic role as a scientific and rational basis to ensure that the Regional Regulations produced are in accordance with the needs of the community, based on the principles of good regulation formation, and do not contradict higher legal norms. This study uses a normative juridical method with a statutory approach and conceptual analysis to identify the relevance, implementation, and challenges in the implementation of Academic Draft obligations. The results of the study show that the obligation to prepare Academic Drafts has been regulated in laws and regulations, but its implementation is often faced with various obstacles, such as low technical understanding, limited budget allocation, and lack of expert involvement. Therefore, it is necessary to strengthen regulations and increase institutional capacity to ensure a more participatory, transparent, and accountable process for the formation of regional regulations. This research is expected to contribute to the development of policies that support the formation of quality and responsive regional regulations to the needs of the community.

**Keywords:** Construction; Mandatory; Manuscript; Academic; Area.

## 1. INTRODUCTION

Based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations, every formation of Regional Regulations, both Provincial and Regency/City, is accompanied by information or explanations or what is usually called an Academic Draft.

Article 5 paragraph (1) of Presidential Regulation of the Republic of Indonesia Number 68 of 2005 concerning Procedures for Preparing Draft Laws, Draft Government Regulations instead of Laws, Draft Government Regulations and Draft Presidential Regulations "The initiator in drafting the Draft Law may first prepare an Academic Draft regarding the material to be regulated in the Draft Law."

The word "can" does not mean a must. According to Article 5 paragraph (1), Academic Papers can also be made first for the preparation of regional regulations for certain substances. Furthermore, the provisions of Article 56 paragraph (2) jo. Article 63 of Law Number 12 of 2011 states that draft regional regulations from the DPRD and Regional Heads are accompanied by explanations or information and/or Academic Drafts.

The contradiction between the Presidential Regulation and Law 12/11 creates ambiguity, so it needs to be harmonized in the form of affirming the mandatory Academic Draft in the formation of regional regulations. This is because Academic Drafts are the spirit to describe philosophical, sociological, and juridical aspects in the draft regulations that will be passed.

## **2. METHOD**

The method used in this study is a normative juridical law research method. Normative research must use a statute approach, this is because what will be studied in various legal rules. A normative study that uses a legal *approach* by examining various legal rules. This study uses *a library research system* to find legal materials that are relevant to the research. This research uses a legal and regulatory approach.

## **3. DISCUSSION**

### **The Essence of Academic Draft s and Draft Regional Regulations**

Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia stipulates that "Local governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance duties".

The position of Academic Draft s is not only important for the process of drafting or forming a law, but also in testing, constitutionality is sometimes needed as one of the evidence in trials. The Constitutional Court uses the academic text of the bill to interpret the tested law if it has the potential to contradict the law. So, can the Supreme Court use the academic text of the local regulation draft to cancel the regional regulation? The application of academic texts is not a necessity in a regional regulation, but to see the imperative of a regional product, because it will affect the performance of the regional executive and the institution it forms.

The Academic Draft is based on two reasons, namely substantive reasons and technical reasons. Substantive reasons are intended to obtain a good, applicative, and futuristic draft law. In addition, when a draft regional regulation is supported by an adequate academic text, debate and discussion in the discussion of the draft regulation at the level of the DPRD and the Government can be more efficient because often the debate on the issues that exist in the discussion of the draft regulation has actually been answered in the Academic Paper. Meanwhile, the technical reason is intended to limit the priority list that is too many but not supported by adequate documents. In the end, laws and regulations as a command of the lawgiver (an order from the lawmaker or ruler) that are prepared and accompanied by adequate study will become a good, applicable, and futuristic regulation and lead to the ideal of peace of life (*het recht wil de rede*).

The Urgency of Academic Draft s in the Formation of Regional Regulations Regional Regulations is a medium for Regional Governments to pour out proposals, policies, and/or aspirations of the community for the purpose of regional development. It is hoped that from these regional regulations, rules can be established that can support regional development in a

more advanced direction. However, in reality, many regional regulations have not been able to facilitate the development process for the progress of the region. At the level of implementation, a regional regulation must be right on the desired target of the enactment of the regional regulation and also benefit the community. This is a difficult task of the designers of regional regulations so that the regulations are in accordance with the principles of the formation of laws and regulations as stated in Article 137 letter e of Law Number 32 of 2004 concerning Regional Government, one of which is the principle of usefulness and effectiveness. In fact, often the designers in the technical service or the bureau/legal department of the Regional Government do not / have not translated the government policies that have been prepared for the formation of a regional regulation from the proposal from the technical office, the discussion process at the service or the DPRD to the level of its enforcement.

The existence of Academic Drafts is indeed very necessary in the context of drafting a bill that aims to ensure that the laws that are produced later will be in accordance with the national legal system and people's lives and the existence of Academic Drafts first, the resulting laws do not cause problems (for example, judicial review is requested) in the future. Thus, the urgency of Academic Drafts in the process of forming regional regulations, including Academic Drafts, is a real medium for community participation in the process of forming regional regulations, even the initiative to prepare Academic Drafts can come from the community. This is an advantage in itself, with the involvement of the community in the process of forming regional regulations, the aspirations of the community will be more accommodated. This community participation is also in accordance with the formulation of article 53 of Law Number 10 of 2004 jo. Article 139 paragraph (1) of Law Number 32 of 2004. The next urgency of the Academic Draft is in the process of being incorporated into local regulations that can be applied effectively. Designers fail for three main reasons:

- a. The myth that designers do not handle policy affairs because those who make regional regulations are officials of the Regional Government and the Regional People's Representative Council and not the designers;
- b. Many regions do not have rules regarding procedures that require designers to base their draft regional regulations on logical thinking based on facts in society;
- c. Very few of the designers have an understanding of the theory, methodology, and techniques of designing laws and regulations and who can clearly translate government policies into local regulations that can be implemented effectively.

The establishment of local regulations is a form of authority given to local governments in the context of implementing regional autonomy and assistance tasks as well as accommodating special regional conditions and/or further elaboration of higher laws and regulations. Regional regulations are one of the tools in carrying out social and democratic transformation as a manifestation of local communities that are able to respond to rapid changes and challenges in the current era of autonomy and globalization as well as the creation of good local governance as part of sustainable development in the regions. On that basis, the formation of regional regulations must be carried out in a principled manner. In order for the formation of regional regulations to be more directed and coordinated, a series of processes have been formally determined that must be passed which include the planning process, the drafting process, the discussion process, and the determination and promulgation process. One of the things that must receive special attention from the regional regulation-forming organs is the planning process, in this process it is very necessary to study in-depth, whether problem-solving in the region must be regulated by regional regulations or simply by other forms of regional legal products. In this planning process, it can also be known how the basis for the enactment of a regional regulation is philosophical, sociological, and juridical which is usually stated in an explanation or statement or Academic Draft, which is subsequently contained in the Regional Legislation Program/Regional Regulation Formation Program (see the provisions of Article 403 of Law Number 23 of 2014).

Problem identification contains a formulation of what problems will be found and described in the Academic Paper. Basically, the identification of problems in an Academic Draft includes 4 (four) main problems, which are as follows: 1) What problems are faced in the life of the nation, state, and society, and how these problems can be overcome? 2) Why is it necessary to have a Draft Law or Draft Regional Regulation as the basis for solving the problem, which means justifying the involvement of the state in solving the problem? 3) What are the philosophical, sociological, and juridical considerations or foundations for the formation of the Draft Law or Draft Regional Regulation? 4) What are the goals to be realized, the scope of the regulation, the reach, and the direction of the regulation?

Objectives and Uses of Academic Draft Preparation Activities In accordance with the scope of problem identification stated above, the objectives of the preparation of Academic Drafts are formulated as follows: 1) Formulate the problems faced in the life of the nation, state, and society and ways to overcome these problems. 2) Formulate the legal problems faced as the reason for the formation of the Draft Law or Draft Regional Regulations as the legal basis for solving or solving problems in the life of the nation, state, and society. 3) Formulate

philosophical, sociological, and juridical considerations or foundations for the formation of the Draft Law or Draft Regional Regulation. 4) Formulate the targets to be realized, the scope of regulation, the scope, and the direction of regulation in the Draft Law or Draft Regional Regulations.

The formation of laws and regulations can be seen from the formal and material aspects. The formal aspect includes the theory, principles, and procedures for the formation of laws and regulations, while the material aspect includes the substance or material of the content of the laws and regulations. Viewed from the formal aspect, to be able to form laws and regulations, a draft must first be made which is a difficult thing and requires special expertise for the designers. In general, to design or compile a legal product, the following requirements are required:

1. mastering the regulated material;
2. have a far-ahead/prospective reach;
3. have an inventory of laws and regulations that are directly related to the material regulated;
4. be able to pour out material that will be arranged with short, clear, systematic redactions, and not give rise to different interpretations;
5. mastering legal language; mastering legislative techniques

The problems faced as the reason for the formation of draft regulations as a legal basis for solving problems (solutions) in the life of the nation, state, and society are incomplete. Third, the formulation of considerations or philosophical, sociological, and juridical foundations for the formation of regulations is not comprehensive. The philosophical basis is a consideration that illustrates that the regulations that are formed take into account the outlook on life, consciousness, and the legal ideals of the Indonesian nation. The sociological foundation illustrates that regulations are formed to meet the needs of society in various aspects. The juridical basis describes that regulations are formed to overcome legal problems or fill legal gaps by considering existing rules, rules to be changed, or to be revoked. Fourth, the formulation of the goals to be realized, the scope of regulation, reach, and direction of regulation in the draft regulation are not comprehensive. Academic Papers function to direct the scope of content material. The content material at least includes general provisions, materials to be regulated, sanctions provisions, and transitional provisions.

Furthermore, the procedure for preparing Academic Drafts is as follows: Article 9 of Presidential Decree 87/2014 (1) The Minister harmonizes the Academic Drafts received from the Initiators. (2) Alignment as intended in paragraph (1) is carried out on the systematics and

content material of the Academic Draft . (3) Coordination as intended in paragraph (1) is carried out in a coordination meeting with the participation of stakeholders. The Academic Text of the Draft Law that has been completed is harmonized as referred to in Article 9 to the Initiator accompanied by an explanation of the results of the adjustment. This Academic Draft comes from the initiator where the initiator who prepares the Academic Draft here is the minister or the head of a non-ministerial government institution who submits a proposal for the preparation of the Draft Law. This means that it depends on who the initiator of the Academic Draft is. Later, the Academic Draft will be aligned by the Minister of Law and Human Rights by including stakeholders.

The majority of Regional Regulations have problems related to technical issues, such as titles that are not in accordance with the substance or material of the Regional Regulation. There are four indicators that cause the Regional Regulation to be problematic, namely: 1. The formation of the Regional Regulation is not based on a priority scale in accordance with the development of the legal needs of the community; 2. There is a disharmony between the Regional Regulation vertically and horizontally with other laws and regulations; 3. The formation of regional regulations is not coordinated, directed, systematic, and integrated prepared by the DPRD and Regional Governments, and 4. The existence of the Regional Regulation that is prepared is not preceded by the inclusion of academic texts. The birth of problematic Regional Regulations is inseparable from the condition that when the preparation of the Regional Regulation is not based on a comprehensive understanding of the background, reasons, objectives, and scope of the material regulated in the Regional Regulation. In the preparation of the draft regulations, not all of them are accompanied by Academic Draft s. In the sense that, the utilization of academic literature in the Regency/City Regional Regulation has not been able to harmonize with the importance of academic texts in the preparation of a Regional Regulation. The preparation of Academic Draft s in the process of forming regional regulations is not a necessity, but when viewed from the aspect of utilization and regulation, it can be interpreted that an Academic Draft is urgently needed in the formation or preparation of the draft of the Regional Regulation. Thus, the existence of Academic Draft s is not only a formality but has a relationship with the planning for the formation of the Regional Regulation.

The essence of Academic Draft s and draft regional regulations lies in their shared goal of contributing to societal progress through knowledge and governance. Academic Draft s serve as a cornerstone of intellectual advancement, providing rigorous, evidence-based analyses, innovative theories, and critical insights that deepen our understanding of various disciplines. These manuscripts follow a structured format to ensure clarity and reliability, often

undergoing peer review to uphold scientific integrity. Draft regional regulations, on the other hand, are legislative instruments designed to address specific local issues and govern activities within a particular region. They aim to create policies that reflect the unique needs and aspirations of local communities while aligning with broader national laws. The synergy between the two is critical; Academic Draft s often inform the drafting of regional regulations by offering a research-backed foundation for policy-making. This integration ensures that regulations are not only practical and enforceable but also equitable and forward-thinking, ultimately benefiting both governance and society at large.

### **Consequences of Draft Regional Regulations Without Academic Draft s**

Regional Regulations as a result of a joint agreement between the DPRD as the people's representative and the Regional Government. The enforcement of a Regional Regulation is at the local or regional level where the Regional Regulation is determined. Jimly Asshiddiqie in this case explained that: As a product of the people's representatives together with the government, regional regulations like laws can be called legislative acts, while regulations in other forms are regulatory products or regulatory products (executive acts). The difference between the regional regulation and the law in terms of the territorial or territorial area in which the regulation applies is national or local. Laws apply nationally, while regional regulations only apply within the area of the local government concerned, namely within the provincial area, district area, or city area of their respective cities. Therefore, the regional regulations are no different from "local law" or locale wet, which is local legislation.

Academic Draft is a manuscript of the results of research or legal studies and other research results on a certain problem that can be scientifically accounted for regarding the regulation of the problem in a Draft Law, Draft Provincial Regional Regulation, Draft Regency/City Regional Regulation, as a solution to the problems and legal needs of the community.

Regional regulations are one of the characteristics of regions that have the right to regulate and manage their own households (autonomous). Regional household affairs come from two sources, namely autonomy and assistance duties (medebewind). Therefore, regional regulations will consist of regulations in the field of autonomy and regional regulations on assistance duties. It can be said that regional regulations in the field of autonomy are regional regulations that are sourced from attribution, while regional regulations in the field of assistance duties are regional regulations that are sourced from the authority of delegates.

The preparation of Academic Drafts is an effort to take a comprehensive approach to plan for the formation of a Draft Regional Regulation. The approach carried out through a research method is the first step to finding out the reality of the interests of various parties, both the community and the government. Jimly Asshiddiqie in Ni Made stated that in realizing an effective legal system, it is necessary to reorganize legal institutions supported by the quality of human resources, culture, and legal awareness of the community that continues to increase, and accompanied by the renewal of structured legal materials in accordance with the development of the needs of the Indonesian people. Harry Alexander in Ni Made, *The Formation of Laws*, including the establishment of Regional Regulations based on article 43 paragraph (3) and article 57 paragraph (1) of Law Number 11 of 2012, must be accompanied by an Academic Draft. According to Harry Alexander, what is meant by an Academic Draft is a preliminary manuscript that contains ideas for regulation and content of legislation in certain fields. The form and content of the Academic Draft contains the idea of regulating a certain field of legal material that has been reviewed in a holistic futuristic manner and from various aspects of science, equipped with references that contain urgency, conception, foundation, legal basis, principles used and thoughts on norms that are poured into the form of articles that can be accounted for in terms of legal science and legal politics that are outlined.

The formulation of Law No. 12 of 2011 only mentions the Bill and local regulation draft when directly mentioning the need for NA. Other types of laws and regulations are not mentioned at all whether it is mandatory to use Academic Draft or not. But in practice, Academic Draft is often prepared in the making of draft regulations other than bills and regional regulations. Although there is no specific obligation for all types of laws and regulations, there are consequences that arise if the Academic Draft is ignored. Academic Draft contains existing legal conditions or laws and regulations that regulate the substance or material to be regulated. Second, the Academic Draft contains the relationship of new laws and regulations with other laws and regulations, vertical and horizontal harmonization, and the status of existing laws and regulations, so that the Academic Draft is able to prevent overlapping regulations.

The formation of Regional Regulations is the implementation of the principle of autonomy and assistance duties, this is as explained by Ridwan H.R.: Regional Regulations in the framework of autonomy regulate the substance and procedures for their implementation, while Regional Regulations in the framework of assistance tasks or further elaboration of higher legislation, only regulate the implementation procedures do not regulate the substance, because the substance has been regulated by the assisted party or has been regulated in higher laws and regulations. If the Regional Regulation of the task of assistance also regulates the



substance, there will be a dualism of norms and the Regional Regulation concerned exceeds its authority in terms of content. Autonomous Regional Regulations are a product of legislation, while Regional Regulations are delegated legislation.

The next urgency of the Academic Draft in the process of forming laws and regulations was stated by Mahendra Putra Kurnia as follows: The Academic Draft explains the reasons, facts, or background about the things that encourage the arrangement of a problem or affairs so that it is very important and urgent to be regulated in laws and regulations. Aspects that need to be considered in this background are ideological, political, cultural, social, economic, defense, and security aspects. The benefit of the information in the background for the formers of laws and regulations is that they can know for sure why law and regulations need to be made and whether the laws and regulations are indeed needed by the community.

Draft regional regulations created without the support of Academic Drafts can lead to significant challenges and consequences. Academic Drafts provide a foundation of evidence-based insights, rigorous analysis, and well-researched data that inform the creation of effective and relevant policies. Without these scholarly inputs, draft regulations risk being poorly designed, lacking alignment with best practices, and failing to address the root causes of local issues. This can result in vague or impractical policies that are difficult to implement or enforce. Moreover, the absence of academic research increases the likelihood of unintended consequences, such as economic inefficiencies, social inequality, or environmental harm. Additionally, stakeholders may lose trust in the legislative process if regulations appear arbitrary or disconnected from the community's actual needs. Therefore, integrating Academic Drafts into the drafting process is crucial for ensuring that regulations are both impactful and sustainable.

#### **4. CONCLUSION**

The obligation to prepare Academic Drafts in the process of forming local regulation draft is a strategic step to ensure that every regional law product is based on in-depth scientific studies and in accordance with the needs of the community. Although it has been regulated in laws and regulations, the implementation of this obligation faces various challenges, such as limited resources, lack of technical understanding, and lack of expert involvement in the drafting process. As a result, many Regional Regulations are ineffective, non-implementing, or even contrary to higher regulations. Therefore, strengthening the implementation of Academic Draft obligations is an urgent need to improve the quality of regional regulations

that are responsive, participatory, and in accordance with the principles of forming good laws and regulations.

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