

The Role of Regional Government and Provincial Legislative Council in Academic Draft Arrangement for Regional Regulation Formation

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Abstract

Academic Draft asides to be one of embodiment form of good legislative formation principles, is also an application of the principle of conformity between the type and material content in good legislation formation. Thereby, the Regional Government and the Regional People's Legislative Assembly (DPRD) have a very strategic role in the formation of responsive regional regulation through the planning of regional regulation and the arrangement of Academic Draft for regional regulation that arranged in a planned, integrated, and systematic with priority scales for a certain period as well involve the participation of society and parties whom have competence/skill in the planning and arrangement of Academic Draft.

Keywords: The role of regional government and DPRD, academic draft, regional regulation.

I. Introduction

Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation and Law Number 23 Year 2014 on Regional Government has given a platform to democratic political interaction in the legislation of regional regulation. Formulation of Explanation of Law Number 23 Year 2014 on Regional Government essentially states that the legislation of regional regulation is in order to improve the welfare of the society by always providing attention to the interests and aspirations that arise in society. Both laws have also determined the principles of transparency, the right of society to participate in the formation of regional regulation, and the presence of orders for the organs authorized to establish regional regulation and publish regional regulation formulation.

Democratic political interaction in legislation of regional regulation is intended to establish Good Governance, which demands a climate democratic with governance management based on the principles of participation, accountability and transparency to produce responsive regional regulation. In other word, Good Governance is highly dependent on the participation of the society at large. This is pursuant to A. Pangerang Moenta stated that "effective Law or Act (including regional regulation) is those that actually manifest the behavior desired by the law itself. And the law (including regional regulation) is actually manifesting decision-making by government that is not arbitrary. In other words, good law is a law created by involving society participation as much as possible. With such sense of belonging and sense of responsibility among the people involved in the formation of the regional regulation will occur".¹

Related to this matter, Jimly Asshiddiqie also argued that it should have legal norms to be poured in legislation formulation which has properly prepared based on mature thinking and deep contemplation, solely for public interest, not personal or group interests.² By referring to the principles of legislative establishment including the establishment of a Regional Regulation as mentioned above, good Regional regulation must, definitely, follow the principles of good legislation, therefore the established Regional regulation will be useful in a long period of time and survive in accordance with the conditions of society development and sustainability.

Relating to Academic Draft, it is one form of embodiment of good legislative formation principles. Besides that, the existence of Academic Draft is also an application of the principle of conformity between the type and content material in the formation of good legislation.³ Thereby the Academic Draft can be used as the basis for the study to determine the material content of a Law and through the study and arrangement of Academic Draft, it is expected that the Law established can comply the objectives of the formation, can be executed and enforced.⁴ Therefore, the formation of a Regional Regulation requires planning and prudence in its formulation. The role of research and study prepared in the form of Academic Draft is very important to support the formation of the Regional Regulation in order to avoid the possibility of conflict with higher regulation or public interest. Besides, with the existence of research and assessment before the formation of Regional Regulation can also

¹ A. Pangerang Moenta. 2003. Metode Perancangan Perundang - Undangan Daerah. Amanna Gappa Journal, Volume II Number 2. Fakultas Hukum Universitas Hasanuddin, Makassar, p.78

² Jimly As-Shiddiqie, 2006, Perihal Undang-Undang di Indonesia, Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, Jakarta, p.320

³ Article 5 Law of the Republic of Indonesia Number 12 Year 2011 on Implementation of Legislation, State Gazette of the Republic of Indonesia Year 2011 Number 82 Additional State Gazette of the Republic of Indonesia Number 5234.

⁴ Yuliantri, Azas-Azas Pembentukan Peraturan PerLawan yang Baik, Gagasan Pembentukan Undang 0 Undang Berkelanjutan, PT. RajaGrafindo Persada, Jakarta, 2009, p.170.

avoid possible overlap with other Regional Regulation (Existing Local Law).

The formation of Regional Regulation is still felt less or has not exceeded the planning of the good legislation formation. It is indicated by (a). There are still many problematic regional regulation by virtue of the substance is considered controversial, ambiguous, overlapping and inconsistent both vertically and horizontally; (b) Has not shown commitment and character that are responsive to human rights development, weak and marginalized society, gender justice value; and (c) The process of its formation is less aspirational and participative.¹ In relation to the numerous finding of regional regulation that is problematic because the substance is considered controversial, ambiguous and overlapping and not consistent vertically and horizontally, generally triggered by the high spirit of regional autonomy, resulting in a rapid increase in the formation of Provincial and Regency/City Regulations. However, the establishment of regional regulation still causes many problems until it is annulled. Based on this, then the problem to be discussed in this paper is how is the essence of the arrangement of Academic Draft for regional regulation formation? and what are the terms that must be complied in the Academic Draft for regional regulation formation?

II. Research Method

This study is a type of legal research that will examine and analyze the role of regional government and Regional People's Legislative Assembly (hereinafter DPRD) related to the arrangement of Academic Draft for regional regulation formation in 3 (three) legal order, namely, legal theory (*rechtstheorie*), legal philosophy (*rechtsfilosofie*) and legal dogmatic (*rechtsdogmatiek*). Legal theory, legal philosophy and legal dogmatic are then directed to the practice of law concerning the establishment of law and the enforcement of law² by using the approach of legislation and conceptual approach.³ Subsequently, the data collected is analyzed qualitatively.

III. Result and Discussion

A. The Essence of Academic Drafts Formation of Regional Regulation

The development of the legal field has shown significant progress and has conferred contribution to the achievement of the development objectives. However, putting into realization that progress achieved was not yet strong enough to face the challenges that exist, that fulfill society's demands and strictness of global competition. In its implementation, various legislation either at central and local levels, there are still hindrances in efforts to achieve justice and public order. In fact, series of legislation has been invalidated either by the Constitutional Court Law and Regional Regulation by the President through the Minister of Home Affairs.⁴

The planning stage is the first step executed to achieve the goal of forming a good legislation. One of the activities of planning the formulation of legislation is the arrangement of Academic Draft. Through the study and arrangement of Academic Draft, it is expected that the legislation including the established regional regulation can comply the achievement of the objectives of the establishment that can be implemented and enforced because in the Academic Draft provides explanation or description on why the Regional regulation was created.

Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation has provided space regarding the existence of Academic Draft in the process of formulating legislation including the Regional regulation formation. The provisions on the existence of Academic Draft in the regional regulation formulation can be seen in Article 56 paragraph (2) which stipulates that the provincial regional regulation draft as intended in paragraph (1) shall be accompanied by explanation or description and/or Academic Draft.

Legal basis for the arrangement of Academic Draft for Regional Regulation formation namely Article 57 of Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation is determined that:

1. The Arrangement of Academic Draft for Provincial regulation formulation draft shall be conducted in accordance with the technique of arranging the Academic Draft.
2. Provisions concerning the technique of preparing Academic Draft as referred to in paragraph (1) are contained in Attachment I, which is an inseparable part of this Law.

Observing to provisions above therefore it can be concluded that in the arrangement of Academic Draft becomes the most important part in the arrangement of regional regulation formation planning, by virtue of Academic Draft illustrates the priority scale of regional regulation formulation by DPRD and Regional Government.

According to authors' point of view Academic Draft is an inseparable part of arrangement of a legislation formulation including the establishment of regional regulation. During this time, Academic Draft is often underestimated, therefore even though it has been directed that an Academic Draft must accompany every

¹ Wicipto Setiadi, Peran Strategis Naskah Akademik dalam Pembentukan Perda, This paper was presented in Rapat Koordinasi Undang-Undang Law Center on January 29 2011 in Pangeran Beach Hotel, Padang, West Sumatera, p.3

² Bruggink in Arief Sidharta, 1999, Refleksi Tentang Hukum, Cipta Aditya Bhakti, Bandung, p.65

³ Soerjono Soekanto, 1986, Pengantar Penelitian Hukum. UI Press. Jakarta. p.53

⁴ Marwan, et.al. Principles and Legal Aspects of Academic Draft on Responsive Regional Regulation Formation, International Journal of Humanities and Social Science Research, Volume 3 Issue 1, January 2017, p.41

legislation especially the law and regional regulation. Yet in its practice, Academic Draft has not been fully used as guidelines for the establishment of a legislation, hence after the draft of regional regulation is established into regional regulation then evaluated by the Central government over provincial regulation and by the governor over many regency/city regulations that are annulled by virtue of considered as contrary to higher legislation and public order.

Accordingly, pursuant to H. Alifuddin Jamal (Member of Provincial Legislative Council) stated that it is undeniable that there is still some regional regulation that are annulled by the central government because they are considered to be contrary to the higher law and regulation as well opposed to public order, therefore improvement definitely in any formation of regional regulation should be based on Academic Draft (interview, October 7, 2016). The same points that Ahmad Hadis (Bintradiksi/NGO in Gowa Regency) explained that there should be no more problematic regional regulation if every regional regulation formation is based on good Academic Draft (interview, September 5, 2016).

Based on foregoing matter, it should be understood that the Academic Draft is the text of the research result or the study of law and other research results on a certain problem that can be scientifically justified on the problem management in a legislation formulation as solution to the problems and legal needs of the society. By the presence of Academic Draft for Regional Regulation formulation, a Regional Regulation formulation can be prevented from the arrangement of the "recklessly created" or unclear conception.

In the science of legislation, Academic Draft is a prerequisite for arranging legislation formulation.¹ The existence of Academic Draft on the process of formulating legislation is felt increasingly important. Thoughts about the importance of Academic Draft are motivated by two reasons at least, namely substantive reasons and technical reasons. The substantive reason is intended to obtain a law formulation even good regional regulation formulation, applicative and futuristic. In addition, when a law formulation and Regional Regulation formulation have been supported by adequate Academic Draft, the debates in the discussion of the law formulation even regional regulation formulation in the legislative body can be more efficient. By reason of it often the debate has occurred on issues that should have been answered in the Academic Draft. As for technical reasons, it is intended to limit the list of too many priorities but is not supported by adequate documents.

Prior to arrange an Academic Draft for Legislation including the formation of regional regulation in the format/pattern contained in the annex of Law even in Domestic Regulation, therefore previously it is necessary to conduct legal studies and research in order to obtain comprehensive data and information relevant to the subject matter that will be arranged. Based on the complete data and information, the arrangement of Academic Draft or drafts of good regulation formulation can be executed. The compilation of an Academic Draft or draft of legislation formulation that is not based on data and information which is complete and accurate, then the existence of the Academic Draft or draft of legislation formulation is difficult to be accountable either in form of practical and scientific.

According to Sri Rahmi (Member of Provincial Legislative Council) stated that in general the arrangement of Academic Draft for regional regulation formation is the result of research in the field of law and other fields and the results of study that can be accounted scientifically, but still there are Academic Draft compiled not based on research results, the data and problem described in the Academic Draft does not match the actual conditions (interview, November 10, 2016).

Furthermore, according to Herwin Firmansyah (Head of Sub-division of Regional Law and Human Rights Bureau of South Sulawesi Provincial Secretariat) stated that Academic Draft compiled by academicians are the result of thorough assessment research hence to provide solutions to the problems occurring in the society, even though it is admitted that there are still Academic Drafter in which the data and facts of the problems that occur in society is not accurate (interview, September 12, 2016).

This illustrates that arrangement of regional regulation formulation on service in education field and the arrangement of regional regulation formulation on health services field which is one of the basic rights of society has been arranged through research on the conditions and problems that occur in the society related to education and health problems and also description assessment was held or explanation for the changes of regional regulation on free health services in South Sulawesi.

In the arrangement of Academic Draft for Regional Regulation formation then, two important matters, namely:

1. Time of Academic Draft Arrangement at the stage of Regional Regulation formation.

The arrangement of Academic Draft is closely related to the regional regulation formation therefore it is necessary to know the stages of regional regulation formation. In general, the process of formulating regional regulation consists of three stages,² namely (1) planning, (2) arrangement of regional regulation (preparation of arrangement), (3) discussion and determination of regional regulation. If it is observed, the formulation of

¹ Aan Eko Widiarto, "Metode dan Teknik Penyusunan NA", Paper, <http://widiarto.lecture.ub.ac.id/2009/01/naskah-akademik/>

² These stages are regulated as cited in Article 8 Paragraph (1) to Article 40 Paragraph (1) Minister of Home Affairs of the Republic of Indonesia Regulation Number 53 Year 2011 on Establishment of Regional Law Product.

Academic Draft is in the second stage namely arrangement of regional regulation formulation, this stage can be known as affirmed in the Minister of Home Affairs Regulation Number 80 Year 2015 on the Formation of Regional Law Product.¹

In relation to the time of Academic Draft arrangement for regional regulation formation, therefore the arrangement of Academic Draft is formulated based on the result of the establishment of the Regional Regulation Formation Program (hereinafter Propemperda) which is determined in annual budget. Thereby the regional regulation formulation maker has started to compile Academic Drafts and arrangement of regional regulation draft based on the stipulation of Propemperda and will be discussed until the establishment.

In relation to the data analysis above, according to Herwin Firmansyah (Head of Sub-division of Regulation of the Regional Bureau of Law and Human Right Regional Secretariat of South Sulawesi Province) stated that the arrangement of Academic Draft and arrangement of regional regulation formation draft was performed by the drafter team of each Regional Government Work Unit (hereinafter SKPD) after the establishment of Propemperda as in accordance with opinion of Ridwan Yasin (Head of Legal & Organizational Bureau of Regional Secretariat of Gorontalo Province) stated that the arrangement of Academic Draft for regional regulation formulation by drafter team is performed after the establishment Propemperda by each initiator or SKPD.

Based on the results of the research that has been described in relation to the time of Academic Draft arrangement, which is executed after the establishment of Promperda through the plenary session of DPRD, and become the Regional Government Work Plan (RKP) every year and become the priority program for regional regulation formulation. This matter has a weakness because in planning to the approval of DPRD until it becomes a Promperda, it is not through a process of research and assessment in a comprehensive manner. Therefore, according to the authors the result of the arrangement of Academic Draft becomes the basis for regional government and DPRD in determining Promperda.

2. Terms for Arrangement of Good Academic Draft

As described in the previous section, in order to produce responsive regional regulation, therefore Academic Draft (NA) as a guideline and scientific study of draft of Regional Regulation formulation shall be good and qualified as well. It can be predicted that the Academic Draft as the basis, foundation and scientific study of the draft of Regional Regulation is not good and qualified; definitely the Academic Draft will affect the quality of Regional Regulation formation and regional regulation resulted. Therefore it is important to know the action or criteria of Academic Draft that is good and qualified. This section will describe criteria or term for the arrangement of Academic Draft that can be classified as a good and qualified Academic Draft.²

Arrangement of good and qualified Academic Draft is the arrangement of Academic Draft that is in accordance with legislation and the theory of legislation formulation. The phrase “in accordance with legislation”³ has 2 (two) meanings, namely (1) the content and format of Academic Draft in accordance with the purposes and objectives mandated by the law (hereinafter referred to as the materiel term of the Academic Draft); (2) procedures, technique for the arrangement of Academic Draft and the usage of Academic Draft in accordance as mandated by the laws and regulations (hereinafter referred to as the formal terms of Academic Draft). Based on the meaning of the phrase “in accordance with legislation”⁴, then a good Academic Draft is Academic Draft that fulfils the materiel terms and formal formulation of Academic Draft.⁵ Terms are closely related to legislation and theory of legislation formation.

In relation to the material terms of good Academic Draft related to the Academic Draft’s content material on the Education Implementation of South Sulawesi and Gorontalo Province has outlined the problems encountered in nation and state in the field of education, it is known that in the Academic Draft of education implementation South Sulawesi Province in its detail describes one of the crucial issues of South Sulawesi's education development is that the knowledge of the people of South Sulawesi is still relatively low, indicated by the large portion of the population who are still illiterate, the low average school duration which is reflected in the low number of Index Human Development (IPM). IPM of South Sulawesi Province for a few years earlier was ranked 23rd in National rank, and in 2013 increased to 19th National rank (BPS: 2014) and in 2016 ranked 1st (first) in National rank.⁶

One of the main factors is assumed to be the main cause of low IPM in South Sulawesi is the lack of optimal access to education for society who are generally at the level of Basic Education as the affairs of

¹ SKPD Leader arranges Regional Regulation Formulation accompanied by Academic Draft and/or explanation or description contains main ideas and content material regulated.

² M. Roken Fadly MK, Sifat Hukum dan Implementasi Penyusunan Naskah Akademis berdasarkan Sistem Perundang-undangan di Indonesia, Thesis on Magister Program of Science of Law on Master Program in Padjadjaran University, Bandung, p. 37-38.

³ Ibid.

⁴ Legislation that is intended here in Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation

⁵ M. Roken Fadly MK, Loc.Cit.

⁶ Academic Draft on Education Implementation of South Sulawesi Province, 2015

Regional Government of Regency/City. This is due to the logical consequence of the limitation and distribution of educational facilities and infrastructure, social conditions and the limited ability of the society's economy to participate in education, as well as the overall geographical conditions in the South Sulawesi region. Although the Regional Government of South Sulawesi Province in the last 7 (seven) years has provided facilities and strengthened institutional through the program of Implementation of Free Education to Regency/City.

Some of priority programs of Provincial Government of South Sulawesi in Education as mentioned above is in the form of Free Education Program for Basic Education level then proceed to Secondary Education level, Free of SPP (Donation for Education Coaching) for New Students for State and Private University in A, B and C, Accreditation, free tuition fees for selected students for vocational schools and scholarships for S2 and S3 students, as well as Free quality improvement of educators through boarding school for senior high schools and incentives for teachers of *reciting Quran, mubalig, khatib* and *alim ulama*. The program is implemented in order to grant affordable and quality education services. These programs actually have been held since several years ago but had not been able to overcome the problems of education in South Sulawesi, by reason of implementation of Government affairs in the field of education is not only executed by the Provincial Government but more than that should be held in an integrated and sustainable with the Regency/city.

Based on data analysis above, it can be understood that the Academic Draft (NA) will be maintained upon its neutrality as a pure study by reason of "science demands" not because of the demands of the interests of government and political elites through legal politics. That is why the Academic Draft (NA) was created for "balance pendulum" of regional regulation formulation conducted by DPRD together with the regional government or otherwise in order to be more objective and not to overlap the existing legal science rules. The hope of Academic Draft (NA) is to be realized as the main consideration for drafting process of legislation therefore such ideal of a perfect legislation and far from legal defects will eventually be granted. The most important matter of all this process is to expect that no more repressive legislation, but replaced by laws of autonomous, responsive and populist nature.¹ In this connection, academic draft should be guidelines for the establishment of legislation, including local regulations, so that the established local regulations can accommodate the needs of the community and realize the objectives and effective in the implementation.

B. Terms of Academic Draft Regional Regulation Formation

Formal Terms of Academic Drafts (NA).

Formal term does not only focus on the techniques or procedures for Academic Draft arrangement (NA) solely, but also includes procedure for arrangement and usage of Academic Draft in a series of forming activities of regional regulation until the regional regulation is legitimate.² According to Agussalim A. Gadjong (Academician) stated that formally the arrangement of Academic Draft should refer to applicable legislation, therefore Academic Draft are not merely formalities hence Academic Draft should be utilized properly in the of regional regulation formation in accordance to Academic Draft (interview, December 9, 2016).

In relation to that matter, the authors argue Regional Government and DPRD should take the policy to arrange research programs in each SKPD and research programs proposals DPRD in terms of implementation of proposal right of DPRD members in proposing the regional regulation. The results of this research become the basis for the Regional Government and DPRD in submitting the regional regulation formulation in the following year, thereby the reasons and arguments of proposing regional regulation formulation is clearly comply to the expectations of society and fulfill priority consideration. By this technique the arrangement of Academic Draft for regional regulation formation will be maximized and the involvement of society participation in regional regulation formation is also greater.

The process of formulating regional regulation consists of three stages: (1) planning, (2) arrangement of regional regulation (preparation of arrangement), (3) discussion and determination of regional regulation. Arrangement of Academic Draft is in the second stage of the arrangement stage. This is as confirmed in Article 22 in Minister of Home Affairs of the Republic of Indonesia Regulation Number 80 Year 2015 on Formation of Regional Law Product as follows:

- (1) The proponent in preparing the provincial regulation formulation accompanied by explanation or description and/or Academic Draft.
- (2) Arrangement of explanation or description and/or Academic Draft as referred to in paragraph (1) for the provincial regulation formulation, which is derived from the leaders of the regional apparatus, shall include regional instruments in charge of provincial law.
- (3) Arrangement of explanations or description and/or Academic Draft as referred to in paragraph (1) for the provincial regulations formulation which is derived from members of DPRD, commissions, joint commissions or Bapemperda, is coordinated by Bapemperda.
- (4) The proponent in the arrangement of Academic Draft as referred to in paragraphs (2) and (3)

¹ Law and Society in Transition: Towards Responsive Law. Harper and Raw Publisher, New York, p. 29-52 in Sirajudin, et.al., Legislatif Drafting (Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perlawanan), (In TRANS Publishing Malang, 2008), p. 127.

² Ibid.

- may involve the vertical agencies of ministries conducting legal affairs in government and third parties who have the appropriate expertise to be subject to the draft provincial regulations.
- (5) The explanation or description as referred to in paragraph (1) shall at least contain the subject matter and material to be regulated.
 - (6) Explanation or description and/or Academic Draft as referred to in paragraph (1) shall be used as guidance in the arrangement of provincial regulation formulation.¹

Based on provisions above, it is unclear when exactly arrangement time of the Academic Draft whether before the arrangement of Regional Regulation formulation or after the arrangement of Regional Regulation formulation. To obtain an answer to this question, it is important to consider Maria Farida's opinion regarding the arrangement time of the Academic Draft in the formation of law. According to her, "Academic Draft should be prepared before the legal draft is formed".²

Furthermore, according to Jazim Hamidi argues that the arrangement of Academic Draft, which is conducted after the legal draft, is formulated, although it can be accounted scientifically, but functionally is lacking of regulation direction of regional regulation formulation. In fact, in some cases it may be stated that the arrangement of such Academic Draft is merely a formality and merely provides an academic justification for the formulation of legislation against the formulation it has arranged.³

Following the construction of thinking of Maria Farida and Jazim Hamidi then the right or ideal time for the draft arrangement is before the of the Regional Regulation formulation is formulated. Thereby, the formal term of Academic Draft arrangement is prior to regional regulation formulation.⁴

Based on the view above, the authors' point of view that related to arrangement time of Academic Drafts of regional regulation formation, if it is performed before the arrangement of regional regulation formulation, it will be better because the study of Academic Draft really accommodate the expectations and problems of society.

Pursuant to drafter team of Academic Draft for regional regulation formation by Hj. Sri Rahmi (Member of DPRD Gorontalo Province) argued that to smoothen the arrangement and as a form of society involvement, therefore Academic Drafter team for regional regulation formation involves party from university, non-governmental organizations (interview, November 10, 2016). Further, according to Suharsi Igrisa (Member of Provincial Legislative Council) also stated that the Academic Draft for regional regulation formation involves academician, non-governmental organizations and other parties who have competence related to the regional regulation formulation that will be created. (interview, October 7, 2016).

Furthermore, the role of regional government along with DPRD to grant the arrangement of good Academic Drafts and can be scientifically accountable, then regional governments allocate budget arrangement of Academic Draft with regional regulation formulation draft. This point was uttered by Hj. Sri Rahmi (Member of DPRD) that the budgeting policy of Academic Draft and regional regulation formulation draft is approximately Rp. 200.000.000,- (two hundred million rupiah) (interview, November 10, 2016). The same issue was stated by Awaluddin Pauweni (Member of Provincial Legislative Council) that the budgeting policy of Academic Draft for regional regulation formation in Gorontalo Province is approximately Rp. 75.000.000,- (seventy five million rupiah) (interview, October 7, 2016).

Based on the data description above it can be understood that regional government with DPRD is taking role by involving third party and allocate budget in the framework of draft academic for regional regulation formation. It is hoped that the policy of involving third parties and providing budget for the arrangement of Academic Drafts is no longer just a formality, but the Academic Draft is really the result of research and study in the field of law and other fields related to the problems that occur in the society, thereby Academic Draft becomes the top solution of responsive regional regulation formation.

Identifying at drafter team composition of regional regulation formulation and explanation or description and/or Academic Draft is the most important point, since the drafter team should consist of association of academics and practitioners related to the issues studied, including academics who have an in-depth knowledge of the issues, technical issues of one or more socio-economic experts, legal experts who specialize in substance that is being handled and skilled in legislative draft techniques, and other experts as required.⁵

The selection of team members should balance two factors, among others (1) the membership of the drafter team should not be too narrow, that is: not solely consists of legal academics. The drafter team should be a combination of different skills and interests in order to be able to solve major issues effectively, (2) the

¹ Article 22 in Minister of Home Affairs of the Republic of Indonesia Regulation Number 80 Year 2015 on Formation of Regional Law Product, Official Gazette of Republic of Indonesia Year 2015 Number 2036.

² Maria Farida Indarti, 2007, Ilmu Perlawanan 2: Proses dan Teknik Pembentukannya, Yogyakarta: Kanisius, p. 249.

³ Jazim Hamidi and Kemilau Mutik, Legislative Drafting, Seri Naskah Akademik Pembentukan Perda, Total Media, Yogyakarta, 2011, p. 149

⁴ M. Roken Fadly MK, Op.Cit., p. 41

⁵ Jazim Hamidi and Kemilau Mutik, Op.Cit., p. 114

membership of the draft team should not be too large as it may result in inefficient Academic Draft process.¹ Please note that regional regulation formulation and explanations or description and/or Academic Draft is already regulated in Minister of Home Affairs Regulation Number 80 Year 2015 on Formation of Regional Law Product because the existence of the drafter team becomes important to be fulfilled. In fact, this term is very important to produce Academic Draft as expected.

Same matter is stated by Alvon Usman (Secretary of DPRD from Gorontalo Province) as he stated that of regional regulation formulation in Gorontalo Province is based on the results of the Academic Drafts prepared by the Academic Drafter team and regional regulation formulation draft (interview, 10 February 2016). Then according to Albert Pede (NGO), stated that during the enactment of Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation especially in Gorontalo Province that regional regulation formation was based on Academic Draft, yet the result of study and Academic Draft formulation was used in the arrangement of content material on regional regulation formulation (interview, September 20, 2016).

In ideal order is expected by through the Academic Draft, every Regional Regulation Formulation receives a scientific touch whose it output can produce more qualified law and regional regulation and can be categorized as good legislation.² This qualified regional regulation is likely to be created when it is supported by quality Academic Draft as well. Academic Draft that does not comply the formal terms and materials for the arrangement of good Academic Draft often encounters a fact that must be acknowledged in practice.

According to the authors' point of view, not all of qualified Academic Draft can produce qualified regional regulation and can be categorized as good legislation. This is possibly incurred because the qualified Academic Draft is not used and considered by the regional legislators to maximum extent as possible (formal terms for the usage of Academic Draft). This is one of the problems within the scope of the usage of Academic Drafts in regional regulation formulation. To avoid such matters, regional regulation maker should consider and utilize Academic Draft to select, formulate and determine the material of regional regulation formulation into regional regulation.

Based on the discussion above on the role of the Regional Government and the Regional People's Legislative Assembly in the planning of the formation of regional regulation and Academic Draft arrangement of regional regulation formulation, especially in South Sulawesi and Gorontalo Province in principle that since the enactment of Law Number 12 Year 2011 on the Establishment of Legislation stipulated all regional regulation shall have been through the formulation and accompanied by Academic Draft of each regional regulation draft.

Through the role of Regional Government and the Regional People's Legislative Assembly in planning regional regulation formation and the arrangement of Academic Draft for regional regulation formulation that have been running so far, it is expected that regional regulation outcomes is really become society expectation in solving problems that is occurred or encountered by society. This is in accordance with Moh. Mahfud M.D.'s point of view that Prolegnas/Prolegda is arranged in a planned, integrated, and systematic that contains a portrait of legal plans within a certain period along with procedures that must be taken in its formation.³

In relation to the planning and arrangement of Academic Draft for regional regulation formation by referring to Mahfud M.D.'s opinion that Prolegnas/Prolegda is arranged in a planned, integrated and systematic, it can be seen that there are still weaknesses and problems nationally in planning regional regulation formation, especially in South Sulawesi Province or in Gorontalo Province as research location.

Problem occurs related to the planning and arrangement of Academic Draft for regional regulation formation is the role of regional government and DPRD has not yet maximal in implementing the planning of regional regulation formulation. As a form of not yet maximal of its role that there are still some of regional regulations are annulled with contrary consideration to higher legislation and contrary to the public interest therefore it is considered less responsive. With the annulment of some regional regulation proves the role of regional government as well as the role of DPRD in planning regional regulation formation and the arrangement of Academic Draft have not been in a well planned arrangement and has not been integrated with other fields and not yet systematic in its formation.

Based on the explanation above, it can be inferred that the planning and arrangement of Academic Drafts for regional regulation formation becomes the responsibility of the regional government as well as DPRD, because both institutions are given the authority to propose the planning and the program of regional regulation formation. Therefore, in order that such planning and arrangement of Academic Drafts may run well, then it is expected that the role of regional government and DPRD in order that every formation of regional regulation begins with the arrangement of Academic Draft based on legislation.

Therefore, Academic Draft should be led in the arrangement and discussions of regional regulation formulation draft between the regional government and the DPRD as well other stakeholders. By making the

¹ Ibid.

² I Gde Pantja Astawa and Suprin Na'a, 2008, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, Bandung:Alumni, p.109

³ Mahfud M.D., *Permasalahan Aktual Koordinasi Prolegnas*, Paper presented in 30 Year National Legislation Program Workshop by Coaching Body of National Law, Jakarta, November 19-21, 2007.

Academic Draft as a guideline in the discussion of regional regulation, therefore there will not be debate that is not in accordance with the basic purpose of regional regulation formation. However, pursuant to the authors' point of view there is still occurring in the discussion of a regional regulation that does not make the Academic Draft as a guideline, hence sometimes there is a debate on a regional regulation which is not in accordance with the problems that should incur and the resulting regional regulation problematic or often called problematic regional regulation. By making the Academic Draft as a guide in the arrangement and in the discussion of regional regulation, the regional regulation formation will be more focused on the problems and legal compliance by the society. Jazim Hamidi and Kemilau Mutik raise this point that Academic Draft is urgency at least motivated by two reasons, namely substantive reasons and technical reasons, as follows:

- 1) Substantive reason is intended to obtain good legislation including regional regulation, applicative and futuristic. Moreover, when adequate Academic Draft has supported a draft regional regulation, therefore the debate in the discussion of formulation of regional regulation in the legislature can be more efficient. Because oftentimes the debate occurs on the issues that should have been answered in the Academic Draft.
- 2) The technical reasons are intended to limit the list of too many priorities but are not supported by adequate documents.¹

To maximize the role of the regional government as well as DPRD, it is expected to involve competent authorities related to the regional regulation plan that will be formed to arrange its Academic Draft. Therefore, Academic Draft produced can provide responsive regional regulation. The issue of regional legislation is that there are still many regional regulations that in contrary with higher legislation and public interest as well unresponsive, resulting in the annulment of the regional regulation.

The considerations contained in the annulment of the regional regulation due to principal matters such as: (1). Contrary to higher regulations and (2). Contrary to public order. Region in its governance administration has the authority to create regulations in the regions as regional policies that serve to provide services, increase participation, initiatives and empower society aimed at improvement of society welfare in each autonomous region. Such intended regional policy is normative judicially should not be contrary to other higher legislation and public interest. Thus, in principle, regional regulation is a legal instrument, which is formally juridically given to the regional government in organizing the government in the region based on Article 18 Paragraph (6) of the 1945 Constitution.

Contrary to the public interest as stipulated in Article 1 paragraph 28 Minister of Home Affairs of the Republic of Indonesia Regulation Number 80 Year 2015 on the Formation of Regional Law Product is a policy that causes disruption of harmony among citizens, disruption of access to public services, disruption of tranquility and public order, disruption of economic activities to improve the welfare of the society and/or discrimination against tribes, religions and faith, race among groups, and gender.² Therefore, in overcoming the problem occurrence of regional regulation formation, then Academic Draft ascertain material content of regional regulation that contains all the material content in the context of the implementation of autonomy and assistance tasks, accommodate special conditions of the region and further elaboration of higher regulation. Regional regulation is the closest regulation to aggregate society values in the region. The opportunity is open because regional regulation can contain values identified as special regional conditions.

Thereby, the aspect of public interest which should be the main concern in Regional Regulation formation (content material) is the public interest in the region hence aspirations of society in the region is accommodated and can answer the aspirations and necessity of society.

In addition, in the case of producing responsive regional regulation, therefore it should be in the process of arrangement through the planning of establishment of regional regulation program because Propemperda become the planning instrument of provincial regulations formation and regency/city regulations arranged in a planned, integrated, and systematic. The planning was undertaken by the DPRD and the regional government by arranging a priority-scale planning for 1 year period of which was accompanied by a program namely Propemperda.

In this study, the authors also stated that the regional regulation that is considered responsive namely regional regulation of education implementation and regional regulation on free health services in South Sulawesi and Gorontalo Province. Regional regulation on education implementation and regional regulation on free health services are viewed as responsive regional regulation because several basic matters as follow:

1. The substance of the Academic Draft has described in detail the problems occurring in the field of education and free health services;
2. The content of regional regulation is to further elaborate the higher legislation
3. Academic Draft is supported by accurate data related to education and free health services;

¹ Jazim Hamidi and Kemilau Mutik, Op.Cit., p. 35-36

² Article 1 Paragraph 28 Minister of Home Affairs of the Republic of Indonesia Regulation Number 80 Year 2015 on Formation of Regional Law Product

4. Academic Draft illustrates the importance of making new regional regulation in the field of education as a solution to the problems that occur thereby society basic right can be fulfilled in the field of education and free health services;
5. The content of regional regulation concerning the implementation of education and free health services based on the results of Academic Draft.
6. Regional Regulation can arrange the content material that aims to accommodate the special conditions of the region;
7. Involving the society in the process of formulating Academic Draft up to the arrangement and discussion of regional regulation;

Based on some considerations above, the authors conclude that both regional regulations are included in the category of responsive regional regulation that had complied responsive regional regulation formulation indicators. Regional regulation is considered responsive if implemented through good planning stages, harmonious and thorough process of harmonization, and the involvement of the society to capture the aspirations of society in accordance with the law they desire.

Likewise, the Academic Drafts for regional regulation formulation on the Implementation of Education and Regional regulation on Free Health Services are inferred to be responsive because they accommodate society values that are in favor of necessity and justice contained in the legislation and policies issued by the authorities, not the reflection of political will or the will of authorities, unless society. In addition, the regional regulation on the Implementation of Education and Regional regulation on Free Health Services are not only oriented to the rules but rather emphasize the objectives to achieve equitable education to the whole society as well as the fulfillment of society right to have decent and healthy life.

Thereby, regional regulation formation is urgently necessary for government transparency, with the transparency of the government toward public; it is possible to involve society to participate, either from the process of regulation formulation until the enactment of a regulation. Public participation in the formulation of legislation or regional regulation can be seen in Article 96 of Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation that the public has the right to provide input orally or in writing in legislation formation. The oral and/or written input referred to above can be conducted through public hearings, working visits, socialization and/or seminars, workshops and/or discussions.

Therefore, the role of regional government and the role of DPRD is expected to provide wide space and ensure the involvement of the society in making regional regulation in order to create regulations that are truly responsive to society problem. Therefore, legislation formation is not just a matter of legal draft, but also concerns the fundamental issue, namely how the law will be created to meet the sense of society legal justice.

To realize the establishment of good legislation, there are several steps that can be taken, as follows: "First, the necessity for planning the formulation of the Law through the arrangement of Academic Draft formulation; Second, the existence of public participation in the formation of the Law; Third, it is necessary to match between the content material to the terms of the formation of the Law"¹ In order to have strong regional legislation, regional government and DPRD should take policy involving experts/specialist in order to improve the quality of legal research in various fields, either in political, economic, social and human rights fields; thereby it can develop and establish a model of Academic Draft that can support the process arrangement of regional regulation formulation draft.

In addition to the involvement of experts/specialist of regional government and DPRD in exercising their authority to make regional regulation, it is necessary to expand the participation of the society in the process of formulating Propemperda, thus it is necessary to continuously cooperate with all stakeholders in the arrangement of regional regulation formulation program.

IV. Conclusion

Regional Governments and DPRD have a very strategic role in responsive regional regulation formation through the planning of regional regulation and the arrangement of Academic Drafts for regional regulation that is planned, integrated and systematic with priority scales for a certain period and to involve society participation and those with competency/expertise in planning and the arrangement of Academic Draft. However, priority scale indicators of regional regulation formation planning are not explicitly regulated in Law of the Republic of Indonesia Number 12 Year 2011 therefore it has an impact on the ineffectiveness of regional legislation programs (prolegda).

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¹ Yuliandri, Op.Cit., p.160.

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