

Model of Public Participation in Formation of Good Local Regulation in East Kalimantan Province

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Abstract

The Local regulation is a part of the legislation. According to Maria Farida Indrati in the science and legal theory study, there are at least 4 (four) requirements for qualifying of good regulation such as juridical, sociological, philosophical, and technical requirements. Since the era of regional autonomy marked by the establishment of the Law No. 22 of 1999 on the Local Government till to the Law No. 32 of 2004 on the Local Government and to the issuance of the Law No. 23 of 2014 on the Local Government, the regional government has issued various local regulations as a form of implementation of the regional authority. However, in line with government spirit of creating the local regulations, there are a few of local regulations considered to create a problem and arise the resentment through the society. One of the factors is the local regulation made by the local government is not made by applying public participation. Eventhough in the formation process, the public participation has been done through public consultation, but the legal product produced is still bias with the needs of society. This study was based on the academic research with arising some problems such as (1) The Regulation on Public Participation in Local Regulation Formation Process; (2) The Implementation of Public Participation Model in Local Regulation in East Kalimantan. **The method** of the research was socio legal research. **The result of the research** was (1) the regulation of the public participation in the formation of the local regulation has been begun since the establishment of the Law No. 10 of 2004 on the Local Government and replaced by the Law No. 32 of 2004 of the Local Government. The existing regulation has given the legal certainty and provided a proportional space to the society for participating in the formation of local regulation in order to ensure that there will be the good and participatory local regulation in East Kalimantan Province; (2) In term of implementation of the local regulation in East Kalimantan Province, it can be seen in 4 (four) perspectives for instance: (a) the form of participation; (b) the level of participation; (c) the voluntary participation degree; and (d) the participation typology.

Key Words: public participation, local regulation, and local regulation formation.

1. Introduction

One of the forms of local autonomy authority is implementation of the good local regulation either in the district or provincial level. Since the era of regional autonomy marked by the establishment of the Law No. 22 of 1999 on the Local Government till to the Law No. 32 of 2004 on the Local Government and to the issuance of the Law No. 23 of 2014 on the Local Government, the regional government has issued various local regulations as a form of implementation of the regional authority. However, in line with government spirit of creating the local regulations, there are a few of local regulations considered to create a problem and arise the resentment through the society. One of the factors is the local regulation made by the local government is not made by applying public participation. Eventhough in the formation process, the public participation has been done through public consultation, but the legal product produced is still bias with the needs of society.

The Local regulation is a part of the legislation. According to Maria Farida Indrati in the science and legal theory study, there are at least 4 (four) requirements for qualifying of good regulation such as juridical, sociological, philosophical, and technical requirements.¹ Alexander Abdullah states that public participation should be provided not only in procedural meaning, but also it must be institutionalized as the rights of people guaranteed normatively.²

On August 12th 2011, the Law No. 12 of 2011 on The Legislation Formation was promulgated. Thus, the Law No. 10 of 2004 on the Legislation Formation was no longer applied. The public participation provision in the Law No. 12 of 2011 is set in Chapter XI, Article 96, as followings:

- (1) The public has the right to provide the verbal input (written) and/or inverbal (unwritten) in Legislation Formation.
- (2) The verbal and/ or inverbal input referred in Paragraph (1) done through:

¹ Maria Farida Indrati, 1999, *Legislation Science: Basic and Formation*, Kanisius, Yogyakarta, p. 196.

² Alexander Abdullah, "Decentralization and Law of Local Autonomy in the Reform Era", *Journal Hukum* Vol.3 No.1 January 2010, UII Yogyakarta, p.5.

- a. Public hearing meeting;
 - b. Field trip;
 - c. Socialization; and/ or
 - d. Seminars, workshop, and/ or discussion.
- (3) Public as referred to the Paragraph (1) is an individual or group who has an interest in the substance of the legislation formation draft.
- (4) In order to facilitate the public in giving the verbal input and/ or inverbal as refered in Paragraph (1), every legislation formation draft should be accessible to the public.

Eventhough the public participation has been stipulated as the legal provision, according to Tomy M Saragih, the public participation in local regulation formation process is still partial and symbolic. Several communication masses become only as a complementary basic research procedure that is underlied as local regulation formation process planning. The discussion of the local regulation will be conducted by government agency unit or a special Parliament (DPRD) committee. In this phase, it also involves the academics or experts who are competent in its field.¹

In 2010, East Kalimantan was in fourth position with the number of problematic local regulation in Indonesia by 151 regulations.² In 2014, it got the seventh rank with 81 of problematic local regulation. The most surprising situation was in the middle of 2016 (in June 2016), the Indonesian Minister of Internal Affairs released on its official website, there were 3.143 local regulation and Internal Affairs Decree (Permendagri) that has been canceled due to those regulation considered as a problematic regulation. Those regulation also are deemed inhibiting to grow regional economy, to lengthen the bureaucracy, to hinder investment and license process, to inhibit the business and contradiction to the higher regulation.³ Based on the data released by the Minister of Internal Affairs, there were 65 local regulation canceled in east Kalimantan.⁴

Aside of pros and cons that accompanies the cancellation of the local regulation, it should be assumed that one of the cause of many problematic local regulations is the government does not ask the public to participate in the local regulation drafting process. Besides the cancellation of it, there were some local regulations against the public interest during the its implementation. For instance, the Local Regulation No. 10 of 2012 on Public and Special Road to the Coal and Oil Palm Activities. In Kutai Kartanegara, its Local Regulation No. 2 of 2013 on Mineral and Coal Mining Management in East Kutai Regency is against to the public interest. Even in Samarinda, there were several local regulation highlighted and examined by the Law Faculty of Universitas Mulawarman and NGOs in Samarinda because of 90 % contains mistakes.

2. Public Participation Theory

To understand public participation concept, it should be directed to the one who is incharge to participate and the substance of participation itself. Study on participation will lead to the sense of public and how is the public position as local government. Korten in Khairul Muluk states that the public/ society term popularly refers to a group of people who has the same interest. However, he would prefer the notion which comes from the world of ecology by translating as “an interacting population of organism (individuals) living in a common location”.⁵

Rahnema in the Oxford Dictionary states that participation is as “the action or fact of partaking, having or forming a part of”. In this sense, participation can be a transitive- intransitive, a moral and immoral. It can also be forced or free and can be manipulative or spontaneous.⁶ According to Bryant & White, participation was

¹ Tomy M Saragih, “The Concept of Public Participation in Formation of Local Regulation of Detailed Spatial Plan and the Region”, *Journal Sasi* Vol. 17 No. 3 July-September 2011.

² See <http://regional.kompas.com/read/2010/07/15/03320856/Pemda.Siap.Cabut.Perda.Bermasalah>. Accessed on 7 May 2015. at 09.22 Wita.

³ Ministry of Internal Affairs website: <http://www.kemendagri.go.id/news/2016/06/21/unggah-3143-perda-mendagri-berterimakasih-ke-semua-pihak>, <http://www.kemendagri.go.id/news/2016/06/21/kemendagri-segera-buka-detail-3143-pembatalan-perda>, <http://setkab.go.id/kemendagri-resmi-umumkan-3-143-perda-yang-dibatalkan/>. See also

<http://nasional.kompas.com/read/2016/06/13/17215521/jokowi.3.143.perda.bermasalah.telah.dibatalkan>.

⁴ List of local regulations canceled can be seen in: http://www.kemendagri.go.id/media/filemanager/2016/06/21/b/a/batal_perda_21_juni_2016.pdf.

⁵ Khairul Muluk, 2006, *Desentralization and Local Government*, Bayumedia, Malang, p. 43.

⁶ *Ibid.*, p. 45-46.

defined as a political movement and it was fully developed in 1950s and 1960s. In 1970s, participation was associated with the administration process to add the role of activities in implementation process, so the individual and groups can pursue the interest conflicted and competing for the scarce resources.¹

In other literature, it states that participation can be defined as the participation of a person or a group of society in an activity.² It is basically a form of involvement and the active or voluntary participation because of a reason from internal (intrinsic) and external (extrinsic) in the whole process of activities which includes the decision making in planning, controlling implementation (monitoring, evaluation, supervision), as well as the utilization of the results of activities achieved (monitoring, evaluation, supervision), as well as the utilization of the results of activities achieved.³

According to Dusseldorp, the forms of participation are:⁴

1. Becoming a member of public's groups;
2. Engaging the group discussion;
3. Involving in organization activities to drive the public participation;
4. Mobilizing the public resources;
5. Taking part in the decision making process; and
6. Utilizing the outcomes achieved from public activities.

For the level of participation, Wilcox stipulates that there are 5 (five) levels, as followings:⁵

1. Giving the information;
2. Giving a consultation. It means that it gives advices as a good listener for giving a feed back, but is not involving in ideas or concepts implementation;
3. Collective decision making. It means that to support the idea, choices, and evolving the decision making opportunities;
4. Collective action. It means that it not only does join the decision making process, but also it establishes the partnership in implementing activities; and
5. Giving supports, the local groups will offer the funding, advices, and support.

Voluntary participation degree is distinguished as several levels based on Dusseldorp point of views, such as:⁶

1. Spontaneous participation. It is growing the role of intrinsic participation (understanding, appreciation, and convictions);
2. Induced participation. It means that the participation grows due to induced by the intrinsic motivation (in the form of inducement, influence, encouragement) from external. Eventhough it will give a fully freedom to participate;
3. Pressured Participation by the custom. It means that the participation grows because there is pressure felt by the public in general, or the participation for obeying the customs, values, or norms adopted by the society. They will be marginalized or excluded if they do not participate;
4. Pressured Participation by the socio-economic reason. It means that the participation is conducted because of public are afraid by losing the social status or not gaining the benefit from the activities done; and
5. Pressured Participation by the regulation. It means that the participation is conducted because people are afraid to be punished from the regulation/ provisions imposed.

Participation typology is segregated into:⁷

1. Pasif Typology Participation / Manipulative with its characteristic:
 - a. Public are told what had happened.
 - b. Unilateral announcement by the project manager without considering the public feedback aside.

¹ *Ibid.*, p. 47.

² Totok Mardikanto dan Poerwoko Soebianto, 2015, *Community Empowerment in Public Policy Perspective*, Alfabeta, Bandung, p. 81.

³ *Ibid.*, p. 82.

⁴ *Ibid.*, p. 84.

⁵ *Ibid.*, p. 86.

⁶ *Ibid.*, p. 87.

⁷ *Ibid.*, p. 88-90

- c. The changing information is only for the professional people.
2. Informative Participation with its characteristic:
 - a. Public will be answering the project questions.
 - b. Public are not allowed to participate and affect the project process.
 - c. The project outcome will not be discussed with public.
3. Consultative Participation with its characteristic:
 - a. Consultative way will be used by the public.
 - b. Outsider will hear, analyze the problems, and look for the solution.
 - c. There is no chance to create a collective decision.
 - d. The professionalisms have no rights to give their opinion for further solution.
4. Intensive Participation with its characteristics:
 - a. Public will give their sacrifice/ service to earn incentive.
 - b. Public will not involve in educational process or the project conducted.
 - c. Public has no rights to continue the activities if intensive is discontinued.
5. Functional Participation with its characteristics:
 - a. Public will create a groups to achive the objectives.
 - b. Group formation is after the major decision.
 - c. In the beginning of the stage, pubic depends on outsider, but gradually will show their independence.
6. Interactive Participation with its characteristics:
 - a. Public plays a role in analysis for planning activities and strengthening the institutions.
 - b. Tends to involve interdisciplinary methods that seek diversity of perspectives role in systematic learning process.
 - c. Public has a role to control the decisions.
7. Self Mobilization with its characteristics:
 - a. Public take freely their own inisiative for changing the system and values.
 - b. Public will develop the contact with other agencies to obtain the technical assistance and required resources.
 - c. Public will control over the utilization of existing and/or used resources.

3. Regulation on Public Participation in Local Regulation Formation Process

Indonesia as the democratic country based on the law places the public participation as one of the main element of democracy. The public participation is one of the requirements to achieve the national development. It becomes one of the most important indicator in democratic system.¹

Hereinafter the identification and analysis of public participation in a wide range of legislation that is substantially related to the formation process of local regulation, as followings:

a. The Constitution of the Republic of Indonesia of 1945 (hereinafter referred as UUD 1945);

UUD 1945 basically does not mentioned public participation in the legislation formation process. However, Article 1 Paragraph (2) UUD 1945 states that "Sovereignty is in the hands of the people and is implemented according to this Constitution." The Article 28 further states that "The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law." The Article 28E Paragraph (3) then emphasizes that "Every person shall have the right to the freedom to associate, to assemble and to express opinions." It can be interpreted as a form of constitutional guarantees for the public to participate in the legislation formation process.

b. *Algemeene Bepalingen van Wetgeving voor Indonesie*/ AB (Stb. 1847: 23) General Regulation Regarding Legislation For Indonesia;

Public participation in the legislation formation process is not set in *Algemeene Bepalingen van Wetgeving voor Indonesie*. In Article 1 stated that, "The provisions stipulated by the King or by the Gouverneur Generaal on his behalf, accepted as law in Indonesia, after being published in the form established in their national regulation on government policy". Eventhough in Article 15 stipulated "By the exception and the provision prescribed for the Indonesian and the people equated, customs is not a law, except when the constitution states.", it still did not accomodate the public participation in legislation formation process at that particular time because the regulation applied was the regulation made by Dutch's government, so the customary law or the existing costum was closed by the Dutch/s government.

c. The Law No. 1 of 1950 on Central Government Regulations;

¹ Erwan Agus Purwanto in Agus Dwiyanto, 2006, Achieveing Good Governance Through Public Service. Gadjah Mada University Press. Jogyakarta, p. 186.

The Article 1 in this legal enforcement stipulated that, “The Central Government’s regulations are:

- a. Law and Government Regulation in Lieu of Law;
- b. Government Regulation;
- c. Minister Regulation.”

In the other chapter of this regulation, there was no any provision regarding the public participation in the legislation formation process, especially for the regulation in the local level. It became a natural thing because of the scope of this Law only reached the Ministerial Decree. Nevertheless, the legislation formation process in the national level did not regulate the public participation in creating the regulation. If there was the public participation at that particular time, the way to create that thing was through the Legislative Assembly which created the law according to the scope of this law.

d. The Law No. 2 of 1950 on Establishing the Law on Republic of Indonesia in Publication of the Official Gazette and the declaration and entry to force fo Federal Law and Government Regulation as the Federal Law (Official Gazette No. 1 of 1950);

The public partiipation in legislation formation process was not regulated in this law.this regulation explained about the Official Gazette of Republic of Indonesia.

e. The law No. 10 of 2004 on Legislation Formation;

In Article 7 Paragraph (1) the Law No. 10 of 2004 stated that the type of hierarchies are:

1. The Constitution of the Republic of Indonesia 1945;
2. Law and Government Regulation in Lieu of Law;
3. Government Regulation;
4. President Regulation;
5. Local regulation.

It has been extended that the local regulation must be fixed basing on the principle of law and the principle of special legal regulation. The principle is mentioned in Article 5 and the explanatory of the Law No. 10 of 2004 on the Regulation Formation. One of the basic principles in the legislation formation process was “transparency principle”. It means that the formation process from planning, preparation, drafting and consideration were transparent and opened. Thus, the whole society would have their greater opportunities to provide input in the legislation formation process. It expressly sets in this law out that the public participation in local government which was related with legislation/ local regulation formation process stipulated in the Article 53. It states that “the public has the rights to provide verbal or nonverbal input in the formation process as well as in the consideration draft and the local regulation.”

f. The Law No. 12 of 2011 on Legislation Formation;

It is the same as the Law No. 10 of 2004 that one of the principle used in the legislation formation was “transparency principle” (Article 5 Point g). The purpose of this legislation was “in the legislation formation process, all of the processes (planning, drafting, consideration, approval or designation, and the promulgation) were transparent and opened. Thus, the public has the greatest opportunities to provide input in the formation process.” In more in detail, the public participation in the formation process of local regulation was recognized as an essential element in this regulation. The public participation was specifically stipulated in Chapter XI, Article 96, ie:

- (1) Public has the right to provide the verbal/ inverbal input in legislation formation process.
- (2) The verbal/ inverbal input referredto the Paragraph (1) which can be done through:
 - a. Public hearing;
 - b. Working visit;
 - c. Socialization;
 - d. Seminar, workshops, and/ or discussion.
- (3) Public referred to Paragraph (1) is an individual/ group of individuals who have an interest in legislation formation.
- (4) To ease the public for giving the verbal/ inverbal input as stated in Paragraph (1), any draft legislation should be accessible by the public.

In Article 92 Paragraph 1 stated that “Prolegda dissemination is done by the Parliament and Local Government since the drafting, local regulation draft discussion, to the enactment of local regulation.” Article 92 Paragraph (2) furthermore stated that “Dissemination referred in Paragraph 1 done for giving the further information and/ or obtaining the input.”

g. The Law on the Local Government after the Reformation Era (The Law No. 32 of 2004 and the Law No. 23 of 2014);

Basically, the local regulation provided space for the public to participate in local regulation formation. Article 137 of the Law No. 32 of 2004 on Regional Government has a similar arrangement with Article 5 of Law No. 10 of 2004. Article 139 Paragraph (1) furthermore gives the public a right to participate in legislation formation process in order to provide a verbal/ inverbal input for drafting the local regulation.

Article 1 Point 41 of the Law No. 23 of 2014 then defines the public participation as the participation of the citizen to give their aspirations, ideas, and interests to the local government. Article 354 Paragraph (1) states moreover "In local administration, the government encourages the public participation.". One form of participation is the participation in Article 354 Paragraph (3) Letter a. The article states that "public participation as referred to Paragraph (1) includes the lawmaking and the regional policy which is set for the society."

h. People's Consultative Assembly Decree No. III/MPR/2000 on Legal and Administrative Regulation;

This decree regulates the hierarchy and the legal source in Indonesia. The public participation in legislation formation is not regulated. The regulation regarding the public participation is not regulated in this decree. Article 6 stipulates the legislation drafting, Government Regulation, Local Regulation and legislation testing in the Supreme Court and Presidential Decree will be regulated further with the Law.

i. The Government Regulation No. 1 of 1945 on the Announcement and Entry into Force of the Law and Government Regulation;

This government regulation did not stipulate about public participation. The Regulation basically just provided the methods on how the public know about the Law and Government Regulation which was made by the government of Republic of Indonesia.

j. The Government Regulation No. 68 of 1999 on Implementation Procedures of Public Participation in the State Administration;

This government regulation became one of the fundamental regulation which regulated the public participation stated in the Article 2 and Article 7. Both articles became one of the essential articles which should be spotted by public. Article 2 (1) stated that the public participation in state administration to create a spotless State Administration which was implemented as:

- a. the right to seek, obtain and provide information about the state administration;
- b. the right to obtain the same service and fairness of the Government;
- c. the right to express advice and recommendation in a responsible way to the Government; and
- d. the right to obtain legal protection in terms of: (1) to exercise its rights referred to letters a, b, and c; (2) asked to attend the process of inquiry, investigation, and trial court as reporting witness, witness, or expert witness, according to the provisions of the legislation in force.

The Article 2 Paragraph (1) further implemented pursuant to the provisions of the legislation in force by obeying religious norms and other social norms. Furthermore, regarding to the procedure for the implementation of public participation is organized, as follows:

- (1) People (public) who intend to seek or obtain information concern on state administration has the right to ask institutions concerned;
- (2) The right to seeking, obtaining, and providing information can be done directly or indirectly;
- (3) Information provision as the public's right can be submitted in written form to the relevant agency or the Auditorial Commission; and
- (4) The information provision should be accompanied by a clear data of at least:
 - a. the name and address for the information process by attaching a photocopy of identity card or other identity;
 - b. a description of the facts and the scene informed; and
 - c. documents or other information that can be used as evidence.

Based on the Article 7, the right to obtain the same service and fairness referred to the Article 2 Paragraph (1) Letter b can be obtained by fulfilling the requirements and obeying the procedure based on the legislation in force. Article 10 then said that "every state of administration who accepts the public demand have to give the answer or other information based on the responsibility and the function, take notice by the legislation in force."

k. Presidential Regulation No. 68 of 2005 on Procedures for Preparing the draft of the Law, the Government Regulation Drafting in Lieu of Law, Government Regulation, and the President Regulation;

Article 1 Paragraph (7) states that the Academic Manuscript is a script that can be justified scientifically regarding the conception which contains the background, objectives formulation, objectives to be achieved and the scope, range, object, or towards the Draft of the Law. Article 5 Paragraph (1) states that, "the proponent of the draft of the Law can create the Academic Manuscript about the subjects regulated in the Draft." Article 5 Paragraph (2) states that "the Academic Manuscript as referred in Paragraph 1 is done by the proponent with the relevant Department which has the duty and responsibility in legislation and its implementation can be given to the higher education or the third party which qualified for it."

This regulation does not set any explicit reference to public participation in the formation of legislation, especially in the local level. However, the opening of a space for higher education or other third parties who

have expertise in Academic Manuscript drafting can be interpreted as a form of public participation in the process of formation legislation, although the scope of this regulation only for regulating the Legal Drafting, Draft Government Regulation in Lieu of Law, the Government Regulation Draft and Draft of Presidential Decree.

- l. The Decree of the President of the Republic of Indonesia No. 234 of 1960 on the Enactment of Section Returns Statute of the Department of Justice to the State Secretary;**
This decree only regulates the enactment of Section refund/ State Gazette of the Ministry of Justice to the Secretary of State. It does not regulate public participation.
- m. The Presidential Decree of the Republic of Indonesia No. 188 of 1998 on the Procedure for Preparing the Draft of the Law;**
Even though the scope of this regulation is only the Draft of the Law, this Presidential Decree gives the space for public participation in the formation process of the the Draft of the Law. It can be seen from Article 3 Paragraph 2, it states that "the Academic Manuscript formation process is done by the department/ the initiator agency together with the Department of Justice and its implementation be handed over to universities or other third parties who qualified." Article 4 Paragraph (3) states that the consultation process referred to Paragraph (1) can be regulated to the expert of the Universities and the social-political organisation or the other public based on the needs."
Article 13 Paragraph (3) further states that "by considerer to the Article 14 Paragraph (3), the recommendation can be asked to the higher education and the social-political organisation or the public based on the needs. In Article 17 paragraph (1) and (2) respectively mentioned When the President considers that the legal drafting contains some of the problems related with certain aspects of the ideological-political, economic, socio-cultural, legal, or defense and security, Minister of State Secretary invites the Minister of Justice, Minister or Heads of Proponent Institutions and the Minister or Head of Institution related to complete the Draft. (2) If it is necessary, the Minister of State Secretary will invite universities, socio-political organizations, professional, or other community to participate in the settlement efforts. Article 30 of Presidential Decree mentions "to provide time for the dissemination of understanding of this Law with all its implementing regulations, and provide a reasonable opportunity for the public to understand, the determination of the time became effective."
- n. The Decree of the President of the Republic of Indonesia No. 44 of 1999 on Mechanical Drafting of the Legislation and Forms of the Legal Drafting, the Draft Regulation and the Draft of the President Decree;**
This Decree only regulates the preparation technique and form of the Legal Drafting, the Draft og the Regulation and the Draft the President Decree. It does not set the public participation.
- o. The Indonesian Presidential Instruction No. 15 of 1970 on Legal Drafting Preparing Procedures and the Draft Regulation of the Republic of Indonesia;**
There is no public participation in arrangement of this Instruction in preparing the Legal drafting/ RPP, it can be done by the inter-departmental committee or committees in the department / initiator agency (Article 2 Paragraph (1) and (2)).
- p. The Ministry of Internal Affairs No. 16 of 2006 on Preparation Procedures of Local Legal Products;**
There is no regulation regarding public participation in the Regulation. The procedure in this regulation is dominated by the (local) executive and the legislative.
- q. The Regulation of the Minister of Internal Affairs of the Republic of Indonesia No. 53 of 2011 on the Establishment of Local Legal Products;**
Article 90 of the Regulation expressly states that:
 - (1) The public has the right to provide input for verbal and/ or inverbal in the legislation formation, Perkada and/ or PB KDH.
 - (2) Put verbally and / or inverbal as referred in Paragraph (1) can be done through:
 - a. public hearing;
 - b. field visiting;
 - c. socialization; and / or;
 - d. seminar, workshops, and / or discussion.
 - (3) Society as referred in Paragraph (1) is an individual or group who has an interest in the substance of the legal drafting, Perkada and / or PB KDH.
 - (4) To facilitate the public to provide feedback verbally and / or inverbal as referred in Paragraph (1), any draft legislation, Perkada and / or PB KDH should be easily accessible by the public.
- r. The Ministry of Internal Affairs Decree No. 1 of 2014 on the Establishment of Local Legal Products;**
Article 110 of the Decree expressly states that:
 - (1) The public has the right to provide input for verbal and/ or inverbal in the legislation formation, Perkada and/ or PB KDH.

- (2) Put verbally and / or in verbal as referred in Paragraph (1) can be done through:
 - a. public hearing;
 - b. field visiting;
 - c. socialization; and / or;
 - d. seminar, workshops, and / or discussion.
- (3) Society as referred in Paragraph (1) is an individual or group who has an interest in the substance of the legal drafting, Perkada, PB KDH, and/ or Regional Representatives Council.
- (4) To facilitate the public to provide feedback verbally and/ or in verbal as referred in Paragraph (1), any draft legislation, Perkada, PB KDH, and/ or Regional Representatives Council should be easily accessible by the public.
- s. The Ministry of Internal Affairs Decree No. 80 of 2015 on the Establishment of Local Legal Products;**
Article 116 of the Decree expressly states that:
 - (5) The public has the right to provide input for verbal and/ or in verbal in the legislation formation, Perkada and/ or PB KDH.
 - (6) Put verbally and / or in verbal as referred in Paragraph (1) can be done through:
 - a. public hearing;
 - b. field visiting;
 - c. socialization; and / or;
 - d. seminars, workshops, and / or discussion.
 - (7) Society as referred in Paragraph (1) is an individual or group who has an interest in the substance of the legal drafting, Perkada, PB KDH, and/ or Regional Representatives Council.
 - (8) To facilitate the public to provide feedback verbally and/ or in verbal as referred in Paragraph (1), any draft legislation, Perkada, PB KDH, and/ or Regional Representatives Council should be easily accessible by the public.
- t. The Minister of Internal Affairs and Local Autonomy No. 23 of 2001 on Procedures Preparation of Local Legal Products;**
There is no regulation regarding public participation in this Decree. It only regulates the procedure of preparation in local legal product dominated by the local executive and legislative.

4. Analysis of Public Participation Regulation in Local Regulation Formation Process

Considering to the substance of the various laws and regulations related to the legislation formation process started from the period after independence up to the present, the classification over the setting of public participation in the establishment of regional regulation are:

1. The Regulations which do not regulate the public participation
 - a. *Algemeene Bepalingen van Wetgeving voor Indonesie/ AB (Stb. 1847: 23) General Regulation Regarding Legislation For Indonesia;*
 - b. The Law No. 1 of 1950 on Central Government Regulations;
 - c. The Law No. 2 of 1950 on Establishing the Law on Republic of Indonesia in Publication of the Official Gazette and the declaration and entry to force for Federal Law and Government Regulation as the Federal Law (Official Gazette No. 1 of 1950);
 - d. People's Consultative Assembly Decree No. III/MPR/2000 on Legal and Administrative Regulations;
 - e. The Government Regulation No. 1 of 1945 on the Announcement and Entry into Force of the Law and Government Regulation;
 - f. The Decree of the President of the Republic of Indonesia No. 234 of 1960 on the Anactment of Section Returns Statute, of the Department of Justice to the State Secretary;
 - g. The Decree of the President of the Republic of Indonesia No. 44 of 1999 on Mechanical Drafting Legislation and Forms of the Legal Drafting, the Draft Regulation and Draft of the President Decree;
 - h. The Indonesian Presidential Instruction No. 15 of 1970 on Legal Drafting Preparing Procedures and the Draft Regulation of the Republic of Indonesia;
 - i. The Ministry of Internal Affairs No. 16 of 2006 on Preparation Procedures of Regional Legal Products;
 - j. The Minister of Internal Affairs and Regional Autonomy No. 23 of 2001 on Procedures Preparation of Regional Legal Products.
2. Impicit Regulation
 - a. Constitution of the Republic of Indonesia of 1945;
 - b. The Government Regulation No. 68 of 1999 on Implementation Procedures of Public Participation in the State Administration.
3. A firmly Regulation excluding the Local Regulation

- a. The Presidential Decree No. 68 of 2005 on Procedures for Legal Drafting, Government Regulation Drafting in Lieu of Law, Government Regulation Draft, and President Regulation Draft;
 - b. The Presidential Decree of the Republic of Indonesia No. 188 of 1998 on the Procedure for Preparing the Legal Drafting.
4. Public participation in local regulation formation process
- a. The Law No. 10 of 2004 on the Establishment of Legislation;
 - b. The Law No. 12 of 2011 on the Establishment of Legislation;
 - c. The Law on Local Government after the Reformation Era (The Law No. 32 of 2004 and The Law No. 23 of 2014);
 - d. The Minister of Internal Affairs' Decree No. 53 of 2011 on The Establishment of Local Regulation Product;
 - e. The Minister of Internal Affairs' Decree No. 1 of 2014 on The Establishment of Local Legal Product;
 - f. Republic of Indonesia Minister of Internal Affairs' Regulation No. 80 of 2015 on The Establishment of Local Legal Product.

Based on the classification as mentioned above, it can be seen specifically that the public participation in local regulation formation process has begun since on the establishment of The Law No.10 of 2004 on the regulation formation and The Law No.32 of 2004 on Local Government. The forms of public participation has also been developed from which initially arranged only about the existence of Academic Manuscript as a form of participation. However, in the era of 2010 to present, it explicitly sets the the form and type of the public participation as stated in Article 166 of the Minister of Internal Affairs Decree No. 80 of 2015 on the Establishment of Local Legal Products.

Theoretically, the regulations's substance is stated in Article 166 based on the form of theories and the participation of public existed. The public participation can be done by giving the ideas, skills, and effort by the public. Related to the question, "Does the public participation in local regulation formation process currently guarantee the implementation of local regulation in East Kalimantan?". The question can be answered that basically the existing regulation has given the legal certainty and provided a proportional space to the society for participating in local regulation formation in order to ensure that there will be a good and participatory of local regulation in East Kalimantan Province. Of course, there will a problem in terms of the implementation of it.

5. Public Participation Implementation Model in Local Regulation Formation in East Kalimantan

Paying attention on the public participation situation and condition on Local Regulation formation process in East Kalimantan either in province or district/cities level and related to the public participation theory, the public participation implementation model in local regulation in East Kalimantan can be seen in 4 (four) perspectives, as followings:

1. Participation Model;
2. Participation Level;
3. Voluntary Degree Participation; and
4. Participation Typology.

1. The Participation Model

Referring to Dusseldorp's point of views, the public participation models in East Kalimantan are:

- a. Becoming a member of public's groups and getting involve in the group discussion. The indicator of them are:
 - 1) In the process of local regulations formation that it is accompanied by Academic Manuscript, mostly in Academic Manuscript drafting process is conducted by Focus Group Discussion (FGD), which these activities present the community groups associated with the drafted local regulations objects in order to provide information or advice or input to editorial team of the Academic Manuscript. In the process of preparing Academic Manuscript draft on Fishery, for example, the fishermen grouped in Kontak Tani Nelayan Andalan (KTNA) presents to provide information regarding the fisheries condition.
 - 2) Public test activities. Typically when the Academic Manuscript and the draft has been completed and prior to be approved, the proponent of the local regulations organizes a public test, in which the public test is attended by community groups associated with the object drafted of local regulations. Similar to the FGD activities, the activities of the public test are linked to community groups to provide information or feedback or suggestion related to the object of local regulation formed.

- 3) Recess activity of Parliament member. Any member of Parliament is given an obligation to make a recess or solicit the people's aspirations in their electoral districts respectively in the discussion specific community groups such as youth groups, youth organization, groups of farmers, and religious group often expressed their aspirations, so the aspiration can be used for the certain arrangements linked to the social conditions faced by people of the region.
- b. Utilizing the achieved results from community activities. The achieved indicator is the public participation must be get involving both when the process of the local regulations formed and when it has been enacted.

There is a slightly different perspective to see the opinion expressed by M.Slamet with his theory of participation diversity based on the contributed input and participation of public in utilizing the results of development. Therefore, the form of public participation in local regulations formation process in East Kalimantan are categorized as participation "to provide input, to receive credits from the input, and to utilize the results of the activity". Indicators of this category are majority of local regulations established will always provide the information input or input from the community groups in various processes to convoy the formation of the local regulations such as FGD or a public test.

On various occasions, people who provide the input gain rewards of the inputs they gave. Becoming a natural thing in several practical activities such as FGD or a public test is to every member of the public who attended these activities will be given the transport allowances to its presence, even though sometimes they did not provide concrete input. In addition, the most obvious thing is the involvement of editorial team of Academic Manuscript and the draft regulation as a form of public participation. It had never been found any of the Academic Manuscript and the editorial team of this draft who want to bother themselves if there are not any certain benefits given. Normally, they are from universities. Eventually, if it is seen from the classical theory of the public participation, the form of the public participation in the formation of local regulation in East Kalimantan are in the form of donations of thought and effort.

2. The Participation Level

Based on the point of view of the participation level referring to the theory of the level of participation proposed by Wilcox, the process of local regulations formation in East Kalimantan in terms of the level of participation is just to provide the information and consultation. It means that the public participation in the formation process of the East Kalimantan local regulations are more likely as an informant and consultant, which is offering an opinion as a good listener to give feedback, but does not get involved in the implementation of the idea.

The level of public participation has not reached the stage of collective decision-making, collective act, or give full support. The decision-making is still dominated by the executive and legislative areas based on their authority. In the local regulations implementation, the community is tended to become the subject of managed objects and involvement in the local regulations implementation such as the supervisors, they are rarely given. Even though the opportunity for the community to offer a funding, advising, and other supporting to develop the local regulation.

3. The Degree of Voluntary Participation

The essence of the public participation basically is closely related to volunteerism from the community to be involved in a particular process, which is voluntary involved in the process of local regulations formation. Based on the volunteerism theory stated by Dusseldrop, volunteerism category of the public participation in forming regulation in East Kalimantan can be categorized as:

a. Inductive Participation,

It means that participation is growing due to the induced extrinsic motivation. It is not a secret if the participation of people becomes the particular interests or nothing more than a formality to meet the requirements of the establishment of local regulations. Community participation occurs predominantly because of the "invitation" of proponent of local regulations to provide input and feedback to the local regulations is being formed. The public participation on the degree of volunteerism is not spontaneous, arising the understanding, appreciation, and belief in their own community. Even if there are such a very small amounts, it is mostly done by groups of people who specialize in any particular areas and feel a responsibility toward the field. As an example of it is non-governmental organizations (NGOs) in which has always called for the formation detail on mining or agriculture? It can be seen also in NGOs that focus on the protection of indigenous peoples in the East Kalimantan.

b. Pressured participation by the socio-economic reason.

It is similar that the public participation in the formulation of local regulations has motive as a social and economic interest. In the local regulation in the area of certain licensing, there are the businessmen

who attend to provide input and feedback to substance for the reason of "securing" their businesses. It can be seen in the discussion on the rules governing the market position of modern and traditional markets that there are community from "both sides" of it engaged to voice their own regulation.

c. Pressured Participation by the regulation.

As we see that the public participation in the formation of process of local regulation in East Kalimantan is the result of "mobilization" of society carried out by the proponent of the local regulations. In fact, it sometimes happen a "sporadic mobilization", which presents a number of community groups which are basically incompatible to managed objects in local regulations, it is based on Law No. 12 of 2011 on the Establishment of Rules and Regulation and the Ministry Internal Affairs Decree No. 80 of 2015 on the Establishment of Local Legal Products.

4. The Participation Typology

From the viewpoint of the participation typology, it can be classified as:

a. Informative typology.

In this typology, people just answer the questions that are usually asked by the editorial team of Academic Manuscript and draft regulation in direct interview or by questionnaire. The people are not given a greater chance to influence to the content and accuracy of the research produced.

b. Consultative Participation Typology.

It is similar to the typology of informative. People are only used as a "consultant" to clarify the information that has been obtained. The drafting team Academic Manuscript and draft usually do "their action" in FGD. The drafting team tries to present certain data and people were asked to perform validation on the data presented. Even though with a certain opinion or perception, the public is given an opportunity to clarify the opinion or perception presented by the drafting team, but the drafting team is not obliged to follow up or follow the clarification of a given society.

c. Incentives Typology.

The public participation is because of the incentive or reward provided by the proponent if the public gets involving to provide input. As explained in the previous forms of participation above, there are many public involve in this activity only because of the lure of incentive or reward. This situation is most often found in the "project" of Academic Manuscript and draft regulation. It is too naive if universities want to accept the project only on the basis of "community service".

After analyzing the forms, levels, degree of volunteerism, and the typology of public participation in the formation of local regulation in East Kalimantan, it is necessary also to be identified by the obstacles that occur in terms of community participation. The following obstacles are:

a. People in East Kalimantan tend to be apathetic to the process of local regulation formation. They

sometimes just wait for the result, wait for the inforce of local regulations, even though sometimes they do not know what the purpose of the rules that will be established and have been enacted. There are 2 reasons of it, such as:

1) The community is not informed about the program of local legislation or local regulation formation program. By not knowing, then surely there will be never existed the public participation. Ignorance of information dissemination program of local legislation or local regulation formation program has not performed optimally, there has never been found billboards at the crossroads or electronic boards to inform the public space about the program of local legislation or local regulation formation program. Dissemination only through media page or printed media that is not accessible.

2) The public know the information but unwilling to participate. This is because the mindset of people likely to describe that the establishment of local regulations is the obligation of the executive and legislative. People are just as subject to a managed objects and they just accept the settings issued by the local regulations. If the formation of process of the local regulation is loaded with political content and the interests of a particular group, the community is more reluctant to participate.

b. Facilities and infrastructures of the public participation are not adequate. Geographic features of East Kalimantan are wide and do not connect easily from one region to another or between cities/ districts. It is the same as communication network access is unequal. Those things are a little more influence to the level of the public participation in the local regulations formation.

c. This becomes the most concern obstacle in which many proponents of the local regulations and constituent of Academic Manuscript and the draft regulation consider that the public participation is "a mere formality". It means that the public participation just to abort an obligation in a process of local regulations formation. Even worst that the public participation is not done properly and correctly. Based on observations and experience, there are some Academic Manuscript and the draft regulation that appears just like a magic show. They are not known what is the origin and the formation process,

suddenly they is already finished. It has become a common knowledge of the culture of "copy-paste" in Academic Manuscript and draft regulation drafting done by the editorial team of Academic Manuscript and the draft regulation. This culture ignores the public participation because they are running for the material than the substantial.

6. Conclusion

1. Based on the analysis regarding the legislation in the national level, the public participation can be classified as 4 parts:
 - a. It does not regulate public participation;
 - b. The setting is implicit;
 - c. Regulation in National Level is assertive excluding local regulations; and
 - d. Regulation on the public participation in Local Regulation Formation Process is governed.The categories of the public participation in local regulation formation process are stated firmly, as following:
 - (1) The Law No. 10 of 2004 on the Establishment of Legislation;
 - (2) The Law No. 12 of 2011 on the Establishment of Legislation;
 - (3) The Law on Local Government after the Reformation Era (The Law No. 32 of 2004 and The Law No. 23 of 2014);
 - (4) Republic of Indonesia Minister of Internal Affairs' Regulation No. 53 of 2011 on The Establishment of Local Regulation Product;
 - (5) Republic of Indonesia Minister of Internal Affairs' Regulation No. 1 of 2014 on The Establishment of Local Regulation Product;
 - (6) Republic of Indonesia Minister of Internal Affairs' Regulation No. 80 of 2015 on The Establishment of Local Regulation Product.
2. There are 4 (four) perspectives model in the public participation in local regulations formation process in East Kalimantan Province, such as the Participation Model, the Participation Level, the Voluntary Participation Degree, and the Participation Typology. The obstacles that occur in terms of the public participation are:
 - a. People in East Kalimantan tend to be apathetic to the process of local regulation formation
 - b. Facilities and infrastructure have not been adequate
 - c. There are still many initiators of local regulations and constituent Academic Manuscript and draft regulation that considers public participation as "formality".

References

- Alexander Abdullah, "Decentralization and Law of Local Autonomy in the Reform Era", *Journal Hukum* Vol.3 No.1 January 2010, UII Yogyakarta.
- Khairul Muluk, 2006, *Desentralization and Local Government*, Bayumedia, Malang.
- Maria Farida Indrati, 1999, *Basics Legislation: Science and Formation*, Kanisius, Yogyakarta.
- Totok Mardikanto dan Poerwoko Soebianto, 2015, *Community Empowerment in Public Policy Perspective*, Alfabeta, Bandung.
- Tomy M Saragih, "The concept of Public Participation in Formation of Regional Regulation Detailed Spatial Plan and the Region", *Journal Sasi* Vol. 17 No.3 July-September 2011.
- <http://www.republika.co.id/berita/nasional/umum/14/12/22/ngy7rp-icw-sebut-jumlah-perda-bermasalah-kian-masif>. Accessed on 5 May 2015 at 08.15 Wita
- <http://www.rmol.co/read/2012/08/28/75971/Pemerintah-Batalkan-824-Perda-Bermasalah>. . Accessed on 6 May 2015. At 09.12 Wita.
- <http://regional.kompas.com/read/2010/07/15/03320856/Pemda.Siap.Cabut.Perda.Bermasalah>. Accessed on 7 May 2015. at 09.22 Wita