The challenge of utilizing Regulatory Impact Assessment (RIA) method in the formulation of regional regulations in the disaster sector in DKI Jakarta Province

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Abstract: The RIA method facilitates the structured and comprehensive development of regional regulations, including identifying issues and predicting future benefits. However, using the RIA method becomes complex when dealing with disaster situations. Reflecting on the case of the establishment of Regional Regulation No. 2 of 2020 concerning COVID-19 mitigation, the application of the RIA method by involved actors has not been optimal. This is evidenced by the weak commitment of stakeholders, limited public access, and the scarcity of human resource capacity support. Therefore, it is imperative to strengthen the commitment of regional governments' commitment to adopting an RIA-based approach in forming regional regulations. To address these challenges, certain measures can be taken.

1 Introduction

As a nation founded on the principles of the rule of law (rechtsstaat), Indonesia has established a legal and political system based on its constitution. One of the fundamental elements for the establishment of the rule of law is the presence of adequate legislative regulations. With its adoption of the Continental European legal system (civil law), Indonesia recognizes the significance of legal norms in governing the fundamental aspects of the state's existence. The Civil Law system exhibits three key characteristics: codification of laws, judges not being bound by presidential authority, thereby making legislation the primary source of law, and an inquisitorial nature of the judicial system. The fundamental characteristic that underpins the Civil Law legal system is the binding force of law, as manifested in systematic and codified regulations in the form of laws. This basic characteristic is adopted with the primary consideration that the main value and objective of law is legal certainty [1]. As a proponent of the civil law tradition, Indonesia places its constitution at the highest level in the hierarchy of legislative regulations [2]. It employs legislation, including regional regulations, as the legal framework to govern the nation's affairs. However, within the context of regional regulations, specific issues often arise, particularly in the process of their formulation by both regional governments and the Regional People's Representative Council (DPRD). In this context, there have been challenges encountered, requiring thorough examination and resolution. These challenges encompass aspects of legal clarity, harmonization, and effective execution. As such, the need for coherent and effective regulation-making processes is paramount. This is especially crucial for maintaining the integrity of the rule of law and ensuring the optimal functioning of the legal framework in governing the nation's affairs (regional government and DPRD).

Ideally, every formulation of regional regulations should adhere to clear standards. These standards should not only be reflected in the democratic technical procedures of their creation (legal drafting), but also in the substance of the regulations, ensuring quality and serving as a reference and guide for the nation, in line with the desires and aspirations of the public [3]. Based on the considerations of Law No. 10 of 2004, the formulation of regional regulations is a prerequisite for the development of national law, achievable only through certain, standardized, and binding methods and approaches across all institutions.

The existence of the Regulatory Impact Assessment (RIA) method represents a breakthrough in the current process of formulating regional regulations [4]. RIA is a method used to analyze regulations based on relevant and measurable information, leading to the identification of appropriate solutions [5]. RIA entails seven steps: formulating the issue, setting the objectives, identifying alternative actions, analyzing benefits and costs, engaging stakeholders in each stage, devising implementation strategies, and documenting all analytical processes in an RIA report [6]. Over time, the utilization of the RIA method, which was initially adopted in the United States in the 1970s, has continued to evolve. It has been widely embraced by OECD member countries as a mandatory
guideline for crafting regulations. This development underscores the growing importance of the RIA method as an essential tool in achieving well-informed and effective regional regulation formulation processes [7]. In Indonesia, the use of the RIA method has begun to be socialized, including in the formulation of laws (UU). It's worth noting that the application of the RIA method in reviewing a law not only provides a more objective analytical perspective but also serves as a step toward enhancing public participation. In the practice within the DKI Jakarta Province itself, the RIA method has been known for a while. Several previous studies have shown that the RIA method has been used in the formulation of regulations in DKI Jakarta Province, such as Governor Regulation No. 88 of 2019 concerning Traffic Restrictions with an Odd-Even System [8], and reforming rules related to One Stop Service permits at the Integrated Investment and One-Stop Service Agency (DPMPTSP) of DKI Jakarta Province [9]. These studies were limited to analyzing the use of the RIA method in normal situations. However, there hasn't been an in-depth study, especially focusing on the utilization of the RIA method in the formulation of Regional Regulations (Perda) in abnormal situations or disasters. Therefore, this paper examines the extent to which the DKI Jakarta Provincial Government utilizes the RIA method in creating Regional Regulations amidst the COVID-19 pandemic situation, along with the obstacles encountered during its implementation in the field.

2 Research methodology

The legal research to be conducted in this paper will use the method of mixed legal study, also known as socio-legal research [10]. This approach combines both normative legal research methods with empirical or socio-legal research methods.

3 Results

Fundamentally, the Constitution of the Republic of Indonesia (1945) has granted authority to regional governments to exercise the broadest autonomy. Specifically, through Law No. 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (Law on Jakarta Provincial Government), it is stated that the Jakarta Special Province functions both as the national capital and an autonomous region at the provincial level. As such, the elements of regional governance in Jakarta consist of the Governor and the Provincial Regional People’s Representative Council (DPRD Provinsi). In carrying out its duties as an autonomous region, the regional government has the right to establish regional policies to manage matters falling under its jurisdiction.

The manifestation of these regional policies can take the form of regional regulations, regional regulations, and regional government decisions, as stipulated in Law No. 23 of 2014 concerning Regional Government. Referring to Regional Regulations (Perda), it falls under the jurisdiction of the DPRD in performing its functions. According to Article 12 of the Law on Jakarta Provincial Government, the DPRD Provinsi DKI Jakarta has the functions of legislation, budgeting, and supervision. Based on these functions, the DPRD has the duty and authority to formulate Regional Regulations that will be further discussed with the Governor. Essentially, the Regional Regulations to be established must reflect the principles of regional autonomy, derived from the sociological conditions existing in the society and its governance [11]. This concept aligns with the implementation of the Regulatory Impact Assessment (RIA) method in the creation of Regional Regulations initiated by the DPRD and the Governor, to objectively assess the application of the upcoming regulations. Considering these points, the following are the Regional Regulations that have been enacted by the Jakarta Provincial Government from 2020 to 2023 [10].

**Table 1. List of Regional Regulations of Jakarta Province from 2020 to 2023.**

<table>
<thead>
<tr>
<th>No.</th>
<th>List of regional regulations</th>
<th>Date of issuance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Regional Regulation Number 1 of 2023 Regarding the Conversion of the Legal Form of Regional Limited Liability Company for Credit Guarantee of Jakarta into Regional Limited Liability Company for Credit Guarantee of Jakarta (Regional Company)</td>
<td>March 17th 2023</td>
</tr>
<tr>
<td>2</td>
<td>Regional Regulation Number 7 of 2022 Regarding Regional Financial Management</td>
<td>December 30th 2022</td>
</tr>
<tr>
<td>3</td>
<td>Regional Regulation Number 6 of 2022 Regarding Amendments to Regional Regulation Number 10 of 2018 Concerning Jakarta Propertindo Limited Liability Company (Regional Company)</td>
<td>December 30th 2022</td>
</tr>
<tr>
<td>4</td>
<td>Regional Regulation Number 5 of 2022 Concerning the Regional Budget for the Fiscal Year 2023</td>
<td>December 30th 2022</td>
</tr>
<tr>
<td>5</td>
<td>Regional Regulation No. 4 of 2022 Regarding the Implementation of Respect, Protection, and Fulfillment of the Rights of Persons with Disabilities.</td>
<td>December 30th 2022</td>
</tr>
<tr>
<td>6</td>
<td>Regional Regulation No. 3 of 2022 Regarding the Revocation of Regional Regulation No. 1 of 2014 Concerning Detailed Spatial Planning and Zoning Regulations.</td>
<td>November 14th 2022</td>
</tr>
<tr>
<td>No.</td>
<td>Regulation Title</td>
<td>Date</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>7</td>
<td>Regional Regulation No. 2 of 2022 Regarding Accountability for the Implementation of Regional Budget Revenue and Expenditure for the Fiscal Year 2021.</td>
<td>October 17\textsuperscript{th} 2022</td>
</tr>
<tr>
<td>8</td>
<td>Regional Regulation No. 1 of 2022 Regarding Regional Budget Revenue and Expenditure for the Fiscal Year 2022.</td>
<td>January 24\textsuperscript{th} 2022</td>
</tr>
<tr>
<td>9</td>
<td>Regional Regulation No. 5 of 2021 Concerning the Change of Legal Form of the Regional Company for Water and Wastewater Management in the Special Capital Region of Jakarta to become the Regional Public Company for Wastewater Management Jaya.</td>
<td>December 31\textsuperscript{st} 2021</td>
</tr>
<tr>
<td>10</td>
<td>Regional Regulation No. 4 of 2021 Concerning the Change of Legal Form of the Regional Drinking Water Company in the Special Capital Region of Jakarta (PAM Jaya) to become the Regional Public Drinking Water Company Jaya.</td>
<td>December 31\textsuperscript{st} 2021</td>
</tr>
<tr>
<td>11</td>
<td>Regional Regulation No. 3 of 2021 Concerning the Change of Legal Form of the Limited Liability Company Jakarta Tourisindo to become the Limited Liability Company Jakarta Tourisindo (Regional Limited Liability Company).</td>
<td>December 31\textsuperscript{st} 2021</td>
</tr>
<tr>
<td>12</td>
<td>Regional Regulation No. 2 of 2021 Concerning the Change of Legal Form of the Regional Company Dharma Jaya to become the Regional Public Company Dharma Jaya.</td>
<td>December 16\textsuperscript{th} 2021</td>
</tr>
<tr>
<td>13</td>
<td>Regional Regulation No. 1 of 2021 Regarding Accountability for the Implementation of Regional Budget Revenue and Expenditure for the Fiscal Year 2020.</td>
<td>October 19\textsuperscript{th} 2021</td>
</tr>
<tr>
<td>14</td>
<td>Regional Regulation No. 6 of 2020 Regarding the Revocation of Regional Regulation No. 10 of 1999 Concerning Regional Reserve Funds.</td>
<td>December 30\textsuperscript{th} 2020</td>
</tr>
<tr>
<td>15</td>
<td>Regional Regulation No. 5 of 2020 Regarding the Revocation of Regional</td>
<td>December 30\textsuperscript{th} 2020</td>
</tr>
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</table>

Based on Table 1, from 2020 to 2023, a total of 19 regional regulations (Perda) have been enacted by the DKI Jakarta Provincial Government. Notably, the data highlights the presence of Perda addressing disaster management, particularly during the COVID-19 pandemic. Globally, in the preceding year of 2020, the World Health Organization (WHO) declared COVID-19 as a global pandemic [12]. This led President Joko Widodo to issue several policies, including Large-Scale Social Restrictions (PSBB) [13] and Presidential Decree (Keppres) No. 11 of 2020 concerning the Declaration of a Public Health Emergency for COVID-19, followed by Presidential Decree No. 12 of 2020 designating the COVID-19 Spread as a Non-Natural Disaster and a National Disaster. These presidential decrees were then cascaded down to all regional governments, including the DKI Jakarta Provincial Government, resulting in the formation of Regional Regulation No. 2 of 2020 on the Handling of COVID-19. The presence of this regulation was a response from the DKI Jakarta Provincial Government and the Regional People's Representative Council (DPRD) in performing their legislative functions. However, the emergence of this Perda also garnered criticism due to the limited public participation in its formulation. Hence, it is intriguing to examine how the RIA method was utilized in the creation of Regional Regulation No. 2 of 2020 amidst the COVID-19 pandemic circumstances.

3.1. Formation of Regional Regulations (Perda) on disasters in the Jakarta Provincial Government

The Regulatory Impact Assessment (RIA) method has been commonly used since 2000 after countries that are
members of the OECD (Organization for Economic Cooperation and Development) implemented the idea and published it in the form of RIA implementation. This method is intended to systematically assess the negative and positive effects of regulations that are being proposed or are currently running. The alternatives offered by RIA provide decision-makers with effective and efficient choices.

The RIA method can be positioned as a process, a tool, and a logic of thinking. As a process, the RIA method involves structuring stages to provide benefits in policymaking. As a tool, the RIA method is employed to generate better policies, governance, and development through public participation and the most effective and efficient choices. Furthermore, the RIA method serves as a logic of thinking, encouraging policymakers to approach all options with an open mind and to accept input from various relevant components.

In the application of RIA, there are seven steps involved: formulating the issue, setting the objectives, identifying alternative actions, analyzing benefits and costs, consulting stakeholders in each stage, devising implementation strategies, and documenting all analytical processes in an RIA report. Additionally, the OECD has developed an international standard checklist for quality policies, which includes the following criteria [14]:

1. Is the problem properly identified?
2. Is government action justified?
3. Is the government action the best regulation?
4. Is there a legal basis for the regulation?
5. At what level of government is this action appropriate?
6. Do the regulatory impacts justify the costs?
7. Do the effects reach the whole society?
8. Is the regulation clear, consistent, understandable, and accessible to users?
9. Have all interested parties had an opportunity to express their views?
10. How will compliance be achieved?

These criteria aim to ensure the quality and effectiveness of policies and regulations by addressing crucial aspects such as problem definition, legal basis, transparency, stakeholder engagement, and compliance measures.

Most OECD countries implement RIA by incorporating it into draft legislation, laws, presidential regulations, prime minister's decisions, cabinet directives, cabinet decisions, and government policy directions [15]. In Indonesia, the RIA method was developed since 2003, although in reality, it is not applied to all stages of legislative regulation formation. In Law No. 12 of 2011 concerning the Formation of Legislative Regulations, there are several RIA stages that have not been clearly regulated in the Law, especially regarding the disclosure and analysis of all possible regulatory options, along with the analysis of benefits and costs, and mechanisms for monitoring to evaluate the success of chosen policies and provide input for regulatory responses in the future. Regarding the formation of Regional Regulations (Perda), the utilization of the RIA method has also not been carried out comprehensively. According to one informant:

"I was once invited to the Ministry of Home Affairs, there was an introduction to the RIA Method, a method for the preparation of draft regional regulations, but that method was specifically for composing the Academic Draft of the Regional Regulation. Because what is desired is not always formulated through a Regional Regulation, it must align with the needs of the community. In the Secretariat of the Regional People's Representative Council (Setwan), we facilitate the preparation of the Academic Draft." (Nur Achmad, Head of Legal Products and Assessment Division at the Secretariat of the DPRD DKI Jakarta, 25/7/2023)

From the above interview excerpt, it demonstrates the embodiment of the RIA method in the formulation of Regional Regulations (Perda) in the DKI Jakarta Province, which is translated into the form of an academic draft for the proposed regional regulation (Ranperda). The involvement of academics in the preparation of academic drafts for Ranperda is a concrete effort to adhere to the principles of the RIA method itself. The process of forming Perda emphasizes the spirit of gathering input from various segments of society, which will then be prioritized to determine which regulations will be further incorporated into the created Perda. The government, in its execution, is obliged to take into consideration the social, economic, and political changes occurring in society and adjust existing regulations accordingly. (DKI Jakarta Regional Legislation Agency, 25/7/2023).

In essence, the role of public participation takes precedence in the formulation of Regional Regulations (Perda), as outlined in Article 96 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations. This article explains that the public is given the opportunity to provide input in every stage of the legislative regulation formation process, whether conducted online or offline, based on needs and circumstances. The regulators also have an obligation to facilitate public access to every Academic Draft to enable easy input from the public, which can be done through various public consultation activities, including: a. Public hearings; b. Field visits; c. Seminars, workshops, discussions; d. Other public consultation activities.

Such practices should also be implemented during the formulation of regulations related to disasters. The DKI Jakarta provincial government should facilitate dialogue hearings for all stakeholders directly involved, including those related to disaster mitigation and post-disaster recovery. Reflecting on Regional Regulation No. 2 of 2020, which was created without an accessible academic draft and lacked public involvement due to social distancing measures, the use of the RIA method could not be optimized. However, the emergency situation at that time should not serve as an excuse for the formation of regulations with procedural defects.

3.2. Challenges in formulating RIA-Based regional regulations amid disaster situations

Since the introduction of the RIA Method in 2003, the government has gradually adapted its use in regulatory formation. Although not explicitly stipulated in legal
frameworks, the application of RIA has been accommodated within various policies at the ministry, institution, and even governmental levels. In the case of DKI Jakarta Province, the formulation of RIA-based Regional Regulations has been attempted through the requirement of an academic draft. According to Article 56 paragraph (2) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations, it states: "The draft Regional Regulation of the Province as referred to in paragraph (1) shall be accompanied by explanations or notes and/or an Academic Draft."

The obligation of having an academic draft in every Regional Regulation (Perda) formation, as mandated in Law No. 12 of 2011, serves as a gateway to the implementation of the RIA method. The utilization of the RIA method can be incorporated within Chapter II of the Academic Draft, as specified in Attachment I of Law No. 12 of 2011 concerning the Formation of Legislative Regulations, particularly in Chapter II Theoretical and Empirical Practice Studies, specifically in subsection d, which involves the study of the implications of implementing new systems to be regulated in the Law on various aspects of community life and its impact on the financial burden of the state. Even though the RIA stages are not carried out comprehensively, there is a clear logic regarding the issues to be addressed, the available options to solve those issues, and why a particular option is chosen for implementation.

However, the implementation of RIA within stakeholder circles remains weak. Several issues arise due to the limited public participation in the formation of Regional Regulations (Perda), the top-down nature of the legislative institution's working procedures, and the insufficient capacity of the legislative body to manage public participation. The suboptimal public participation in Perda formation is exacerbated by a culture of state officials tending to be authoritarian, stemming from the traditional closed governance system [16]. Bureaucratic administrative practices that are routine and mechanistic also undermine the ability to manage public participation in Perda formation. Additionally, limitations on receiving input only in specific formats or official languages have hindered public participation [17]. These weaknesses are commonly found in normal situations.

However, in disaster situations like the COVID-19 pandemic, it is not easy for policymakers to consistently employ the RIA method in forming Regional Regulations (Perda). Reflecting on the experience of crafting Perda No. 2 of 2020, the weak competence of stakeholders involved in Perda formulation hindered the optimal implementation of the RIA method. Several causes include the implementation of social distancing measures, leading to inflexible schedules for discussing Perda formulation, limited public awareness activities, including announcing public consultation meetings, and constrained time allocation. In the creation of Perda No. 2 of 2020, the use of the RIA method was actually minimal due to the emergency situation and the urgent need to establish regulations derived from Presidential Decrees No. 11 and No. 12 of 2020. The dominance of the executive branch in the formulation of Perda No. 2 of 2020 during the COVID-19 pandemic situation was explained by one of the informants: "When the legislative body wants to propose a Regional Regulation (Perda) through their own initiative, the mechanism can be somewhat challenging. Their proposal has to go through discussions among different commissions and so forth. As a result, their initiatives are sent to the relevant executive authorities. Therefore, the legislative body often defers to the executive branch for the sake of time efficiency."

(Wahyu, Head of Subdivision at the Legal Bureau of the Jakarta Provincial Government, July 25, 2023)

From the quoted interview, it is evident that there is an unwritten agreement between the Jakarta Provincial Government as the executive branch and the DPRD (Regional People's Representative Council) as the legislative body to expedite the process of forming Regulation No. 2 of 2020, even if public participation is minimal. The involvement of the public, as one of the characteristics of the formation of a Regional Regulation (Perda) in the RIA method, was not prioritized. Unfortunately, this situation is exacerbated by the lack of socialization and the limited use of online methods for public consultations by the creators of the regulation. Consequently, the implementation of the RIA method during the COVID-19 pandemic remains constrained. However, it's worth noting that the use of the RIA method can still be carried out even amid the COVID-19 pandemic.

In addition, the limited use of the RIA method in the formulation of Regulation No. 2 of 2020 is also indicated by the difficulty in finding the academic draft. This raises speculation that the formation of regulations is far from the public interest. This is in line with what Mahfud MD emphasizes, that the nature or character of Legislation (including Regional Regulations), is greatly influenced by the political configuration at the time the Legislation's character is composed [18]. The understanding that the creation of Legislation is for the welfare of the people will directly have consequences on its content [19]. By subjecting the content of Regional Regulations to public scrutiny, it can be determined whether a Regulation is biased. Whether a Regulation is in favor of the broader public or only for the benefit of individuals, groups, or certain factions can be discerned from the content it contains.

4 Conclusion

The application of the RIA method should have become an urgent necessity in every formation of regional regulations in Indonesia. However, in the existing regulations, particularly Law No. 12 of 2011 concerning the Formation of Legislation, the utilization of the RIA method is not fully regulated. Reflecting on the formation of Regulation No. 2 of 2020 concerning COVID-19 mitigation, the Jakarta Provincial Government has also not optimally employed the RIA method. Yet, the RIA method can provide assurance to the public to actively engage in evaluating a Regulation. Therefore, the Jakarta Provincial Government and the Regional People's Representative Council (DPRD) of Jakarta need to pay
attention to the principles of the RIA method when designing regional regulations. At the same time, the public should also be given the opportunity to assess the draft of a regional regulation using the RIA method. This serves as an indirect form of control, considering that the formation of regional regulations by regional governments and DPRD is fraught with political interests.

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