



Community Participation in Regional Regulation Number 8 of 2009 concerning Non-Smoking and Non-Smoking Areas in the Padang Panjang City

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Abstract

Community participation is one important element that must be considered in the formation of regional regulations, community participation in the formation of legislation takes the basis of the 1945 Constitution and is further regulated by Law Number 12 of 2011 concerning Formation of Legislation as Law No. 15 of 2019, Regional Regulation No. 8 of 2009 concerning Non-Smoke Areas and Cigarette Friends in the Padang Panjang City is a regulation that regulates the general problem of smoking, this raises logical consequences for the community, raising questions about the role and participation of the community in the formation of these regional regulations. The author uses normative legal research sourced from secondary data, which includes primary, secondary, and tertiary legal materials. From the results of the study by the author, it was found that community participation in the formation of Regional Regulation No. 8 of 2009 concerning Areas without Smoke and Cigarette Areas in the Padang Panjang City was indeed directly involved, however, real community involvement was limited to the formation of designs, indeed in community discussions participated but was limited to attending and fulfilling the invitation of the Padang Panjang City Regional Representative Council. Community participation in the formation of regional regulations is a tangible form of the principle of regional autonomy. Formation of laws and regulations without community participation can result in procedural defects, therefore legislation made without community participation can be used as a reason for judicial review or testing to the Constitutional Court or the Supreme Court as an institution of judicial power. guaranteed in the 1945 Constitution.

Keywords: *Community; Participation; Regional Regulation; Non-Smoking Area*

Introduction

Historically, the flow of history has begun to draw attention from abstract legal analysis and ideology to the social environment that shapes its laws.¹ The legal approach at the end of the 19th century and the beginning of the 20th century has begun to draw closer to law with society.² This is also to realize

¹ Yeswil, Anwar and Adang, *Introduction to Legal Sociology*, Grasindo, Jakarta, 2008, page. 98.

² *Ibid*

the principles of good governance.³ Also as a form to realize the rule of law as contained in Article 1 Paragraph 3 of the 1945 Constitution. Therefore, the meaning of community participation in the formation of legislation is very urgent to ensure the existence and effectiveness of a statutory regulation.

The Regional Government and the Regional House of Representatives are the two main pillars of the regional government that have an important role in realizing the principles of good governance.⁴ Regional regulations are one type of legislation that has a constitutional position in the 1945 Constitution which was formed jointly between the regional head and the Regional People's Representative Council.⁵ This provision is emphasized by Article 7 of Law Number 12 of 2011 concerning the Formation of Regulations and Regulations as amended by Law No. 15 of 2019.

The contents of the regional regulations are the Provincial Regulations and Regency Regulations or City in accordance with Law Number 12 of 2011 as amended by Law Number 15 of 2019 contains material content in the context of carrying out regional autonomy and co-administration tasks and accommodating special conditions of the region and / or further elaboration of higher laws and regulations. The regulation concerning the content of regional regulations is also contained in Article 4 of Minister of Domestic Affairs Regulation Number 80 of 2018 concerning Regional Legal Products as amended by Minister of Domestic Affairs regulations Number 120 of 2018.

In the city of Padang Panjang, regulations on smoking and non-smoking zones are enacted by the issuance of Regional Regulation Number 8 of 2009 concerning Non-Smoking and Cigarette Stake Areas. This regional regulation was issued not because it was a coincidence, but it started with the issuance of Government Regulation Number 19 of 2003 Regarding the security of cigarettes contained in Article 25 which obliges the Regional Government to create a non-smoking area. In the local regulation mentioned that smoking is a psychoactive substance which, if used, can cause addiction and be dangerous and reduce the degree of human health and that will also cause air pollution which will endanger the health of others and also the strict regulation of cigarettes is also one of the mission of the Padang Panjang City namely to realize a Healthy City and has been awarded the title of Healthy City in the Wiwerdha category in 2007.

Nationally, actually there are regulations about smoking, Law Number 36 of 2009 concerning Health regulates efforts to maintain and improve the health status of the community. And this law also regulates smoking which is actually mentioned in Article 115 of non-smoking areas as well as Article 113 of Law Number 36 of 2009 concerning Health also regulates addictive substances.

There are also other regulations governing smoking, including Government Regulation Number 81 of 1999, the latest being amended with Government Regulation Number 19 of 2003. The regulation regulates advertising and also about the prohibition of smoking in public places. But when seen in reality, the rules are just like a toothless text. A concrete example, Jakarta strictly enforces smoking bans in public places with Regional Regulation Number 2 of 2005 and Governor Regulation Number 75 of 2005. But the implementation is far from expectations, because it is not followed by public awareness. Even this Government Regulation is also strengthened by the Government Regulation on Jakarta air pollution Number 2 of 2006.

Regional Regulation Number 8 of 2009 concerning Non-Smoking Areas and Regulated Smoking Areas in the Padang Panjang City is a regulation governing permitted and non-smoking places in the Padang Panjang City. Such as places of worship, health services, public transportation, places for teaching

³ Charles Simabura, "Public Consultation Mechanism as a Form of Community Participation in the Formulation of Regional Regulations," published in the Constitutional Journal, Vol. III, No. 1, 2010 published by the Constitutional Court of the Republic of Indonesia.

⁴ *Ibid.*

⁵ In Article 18 (6) of the 1945 Constitution it is stated: "Regional governments have the right to determine regional regulations and other regulations to carry out autonomy and the task of determining".

and learning activities and places for children's activities are places that are prohibited from smoking.⁶ But it is still common for people to smoke in places that are prohibited in the regional regulation.

The effectiveness of laws and regulations is not only determined at the stage of implementation and implementation but also very much determined by the process of its formation.⁷ The existence of public involvement from the beginning is expected to increase participation and the level of public adherence to laws and regulations.⁸

Research Method

In connection with the problem formulated above, the type of research used in writing this law is normative legal research or literature, namely legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The materials are arranged systematically, reviewed, then drawn a conclusion in relation to the problem under study.

This study uses a normative method, namely doctrinal law research that refers to legal norms.⁹ So this research emphasizes the secondary material sources, both in the form of regulations and legal theories, in addition to examining the legal rules of a scientific theoretical nature and can be used to analyze the problems discussed.¹⁰

Result and Discussion

Cigarettes are an addictive substance which when used can cause danger to individuals and society, because in cigarettes there are approximately 4,000 (four thousand) chemicals including nicotine which is addictive and tar which is carcinogenic which can cause various diseases including cancer, heart disease, impotence, blood diseases, emphysema, chronic bronchitis and pregnancy disorders. So that in order to protect health from the dangers of smoking, cultivate a healthy life, suppress novice smokers and protect the health of passive smokers, the government has issued Government Regulation Number 19 of 2003 concerning the Safeguarding of Cigarettes for Health which in Article 25 of this Government Regulation mandates the Regional Government to create a region without cigarette smoke.

Padang Panjang is considered as a pioneer city in Indonesia that rejects cigarette advertisements openly and dares to issue regulations on the No Smoking Area and the Smoking Regulated Area as outlined in Regional Regulation Number 8 of 2009.¹¹ Even the impact of the policy of refusing cigarette advertisements, The Padang Panjang City Government must be willing to lose 70% of the regional revenue from the total advertisement / advertisement revenue in the city. The steps in forming a regulation on cigarettes have actually been seen several years before Regional Regulation Number 8 of 2009 concerning Non-Smoking Areas and the Regulated Smoking Area. The movement against the

⁶ Article 4 paragraph 2 of the Regional Regulation of Padang Panjang City Number 8 of 2009 concerning Cigarette Smoke Areas and Smoking Orderly Areas.

⁷ Charles Simabura, op.cit.

⁸ *Ibid.*

⁹ Bambang Waluyo, 1997, *Legal Research Methods*, PT. Ghalia indonesia, Semarang, p. 13

¹⁰ Soerjono Soekanto, Sri Mamudji, 1995, *Normative Legal Research A Brief Review*, Limited Companies. Raja Grafindo Persada, Jakarta, p. 13

¹¹ <https://wartakota.tribunnews.com/2014/06/03/kisah-kota-padang-panjang-berani-melawan-rokok> accessed on March 6, 2020

effects of the dangers of smoking in Padang Panjang began in early 2005. The issue was first raised by the Mayor of Padang Panjang Dr. H. Suir Syam, M. Kes, MMR.,¹²

Suir Syam who served as mayor stated that he was with the Chairman of the Padang Panjang Regional Representative Council Drs. H. Hamidi (Chairman of the Padang Panjang Regional Representative Council 2004-2009) will prepare a Regional Regulation on cigarettes. At the same time he appealed that every government office space be free of cigarette smoke, and for cigarette addicts a special place would be provided.

"You have determined that the impact of the loss is a logical consequence of a new policy. The greater public interest for the benefit of citizens, especially children and adolescents, is more important than receiving instant financial benefits that have a systemic impact on people's lives, " said the Mayor of Padang Panjang Dr. H. Suir Syam, M. Kes, MMR in an interview with reporters at the Padang Panjang City Hall.¹³

Orderly smoking in government offices in the Padang Panjang Regional Government began to take effect since November 11, 2005. By involving various community groups including the Padang Panjang Healthy City Forum, Mid-2007, The city government, by involving various community groups, community leaders and the Padang Panjang Healthy City Forum, began to prepare a draft of a Regional Regulation on Smoking and Non-Smoking Zones.¹⁴

One form of the seriousness of the Padang Panjang Cityin fighting and reminding the dangers of smoking by holding various events that are invited to the general public. Coinciding with World No Tobacco Day (May 31, 2007) that momentum was utilized for the first time by implementing a joint apple care about the dangers of smoking, mass gymnastics and healthy heart walking. This activity was attended by the Mayor and all elements of Muspida, Regional Work Unit Leaders, Civil Servants, Indonesian National Armed Forces and the Republic of Indonesia Police, Students, Female Dharma, Empowerment of Family Welfare and other community organizations.¹⁵

The substance of the enactment of Regional Regulation No. 8 of 2009 concerning Cigarette Orderly Areas and Non-Smoking Areas is to protect human rights for healthy living, free of cigarette smoke, protect public health from smoking, cultivate healthy living and reduce the growth rate of novice smokers.

The Mayor of Padang Panjang has an initiative in establishing Regional Regulation Number 8 of 2009 concerning Non-Smoking and Non-Smoking Areas in the Padang Panjang City. This began when the mayor of Padang Panjang, Suir Syam, who had a doctor background, saw, many people in Padang Panjang eat high-fat foods. Lack of vegetables and fruit. Men like to smoke, but lack physical activity, which this is the originator of non-communicable diseases.¹⁶ So it is clear that local regulations are made because the people do need these regional regulations. This can also be seen before the regional regulation proposed by the mayor has appealed to the public not to smoke anywhere and has also

¹² Suir syam served as Mayor of Padang Panjang for the period 2004-2014 (Suir Syam won the Regional Head Election for Padang Panjang City again in 2009)

¹³ *Ibid*

¹⁴ <http://padangpost.com/welcome/pageUtama/world-health-organization-daulat-suir-syam-jadi-pembicara-di-yangon-myanmar> accessed on March 7 2020

¹⁵ *Ibid*

¹⁶<https://sumbar.antaranews.com/berita/133257/when-wali-kota-padangpanjang-suir-sham-mega-bintang-di-myanmar-health-program-padang-padang-to-pilot-who-is> accessed on 8 March 2020.

reminded the public about the dangers of cigarettes and the draft regional regulations on non-smoking areas and the orderly areas proposed by the local government to the Padang Panjang Regional Representative Council was a joint plan involving community groups including the Padang Panjang Healthy City Forum.¹⁷ But besides these things there are still weaknesses in the formation of this regional regulation. At the hearing, the people who come tend to only consist of community leaders, the sub-district head or its representatives, and the kelurahan or its representatives. Because the invitation letter was given only to 2 districts in the Padang Panjang City and also to community leaders. So sometimes the general public does not know about these regional regulations. Also during the plenary session of the Padang Panjang Regional People's Representative Council the community could only listen and see even though there was an opinion from the community but that was only limited when the formation of the regional regulation was drafted.

Regarding community participation is the embryo of the fertility of democracy in a country. Munir Fuady in his book entitled *Theory of Rule of Law* takes the example of the United States of America as a country that is deeply loved by its people and view that the United States of America is a country that has fulfilled the democratic requirements.¹⁸ But it needs to be understood that the United States is to arrive at a stable country so that public participation is opened as widely as possible, The United States must experience a pretty dark period in its history.¹⁹ Indonesia is one of the countries that have the same goals as the United States namely, run based on people's sovereignty. Among the evidences is that there are clear rules regarding the process of forming laws and regulations as well as the role and participation of the community in its formation.

Jean Jacques Rousseau believes that the rules of society are sacred laws which form the basis of other laws.²⁰ it can be interpreted that the rules that live in society are the meeting point where the rule makers take a foundation. Not only that, community rules are also influenced by various things. Montesquieu believes that humans are influenced by various things including climate, religion, descent, morals and customs.²¹ From this influence formed the general spirit of society.²² The influence caused by these things is not the same for every country, especially society, there is an influence to strengthen and there is also an influence to weaken.²³

Community participation is defined as community participation, both individually and in groups, actively in determining public policies or laws and regulations. Participation is a space for the community to negotiate in the process of policy formulation especially as it has a direct impact on people's lives.²⁴

Community participation is an important forum in the formation of laws and regulations because the presence of public or public opinion can lead to public will. The general will occurs if the people or

¹⁷ <https://wartakota.tribunnews.com/2014/06/03/kisah-kota-padang-panjang-berani-melawan-rokok> op.cit.

¹⁸ Fuady, Munir, *Critical Legal Flow: The Paradigm of Legal Powerlessness*, (Bandung: Limited Company. Citra Aditya Bakti, Bandung, 2003. page. 78.

¹⁹ One of the battles that took place in the United States was that in the 19th century there was a long civil war which claimed quite a lot of casualties. So the enforcement of democratic principles, with the concept of community participation in the United States, is not achieved for free but with difficulty and many sacrifices. Can also be seen in Munir Fuady, *Op. Cit.* page. 137.

²⁰ Jean Jacques Rousseau, *Du Social Contract*, (Translation of Rahayu Surtiati Hidayat and Ida Sundari) Dian Rakyat, Jakarta, 2010, page. 5

²¹ Montesquieu, *The Spirit of Law: Fundamentals of Law and Political Science* (translation of M. Khoiril Anam), Nusa Media Publisher, Bandung, 1977, page. 276.

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*

the community is sufficiently informed of the deliberation, and among them have yet to dispute it.²⁵ J.J. Rousseau argues that the public will is always straight and tends to give priority to the public interest.²⁶

This can be achieved if there is openness from the legislators either by inviting the community, as well as community leaders who are influential in community relations. Even the principle of openness is one of the principles that must exist in the formation of laws and regulations, the meaning of openness is that in the process of forming legislation starting from planning, preparation, compilation, and discussion are transparent and open. Thus all levels of society have the broadest opportunity to provide input in the process of forming legislation.

Thus it can be said that community participation in the formation of legislation becomes a necessity in the decision-making process regarding the regulated substance. And community participation in the formation of legislation is the implementation of the principle of consensus (*het begin selvan consensus*), namely the people's agreement to carry out obligations and bear the consequences caused by the relevant laws and regulations. As stated by A. Hamid Attamimi, the formation of legislation must be considered as the first step to achieve the goals mutually agreed upon by the government and the people.²⁷ However, this consensus must involve the community in the process of preparing and discussing the draft legislation that will be drawn up so that the desired objectives can be achieved.²⁸

Judging from the theory of the formation of laws and regulations, the necessity for community participation is the goal of the theory "*the synoptic policy-phases theory*" (theory of stages of synoptic policy stages).²⁹ According to this theory the formation of legislation as an organized process and well directed towards a binding decision that seeks to find and determine direction for society as a whole.³⁰

Normally, juridical community participation is indeed not mentioned explicitly in the 1945 Constitution. The order of Article 22A of the 1945 Constitution to form a law on the procedure for the formation of a law becomes the constitutional basis for public participation. In accordance with the mandate of Article 22A of the 1945 Constitution, Law Number 12 of 2011 concerning the Formation of Regulations was passed. Article 96 paragraph 1 (one) of Law Number 12 of 2011 concerning the Formation of Regulations and Regulations states: that the public has the right to provide input verbally and or in writing in the formulation of laws and regulations. Even public participation is also regulated in the legislation that was previously in force regarding the formation of legislation, which is contained in Article 53 of Law Number 10 of 2004 concerning the Formation of Legislation.

This article provides a signal that the public has the right to provide input orally or in writing in the process of discussing the draft legislation. So that community participation in the formation of laws and regulations becomes a right where the legislators must respect that right. Therefore, ignoring the community's right to participate in the process of forming legislation can result in legislation becoming procedural flawed.³¹ In a democratic country, public participation is a basic principle, in accordance with the notion of the term democracy, which means government by the people. However, since the beginning

²⁵ Jean Jacques Rousseau, Op. Cit, page. 35

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ Yuliandri, op.cit., page. 187.

³⁰ Saldi Isra, Loc.Cit.

³¹ *Ibid.*, page. 9.

of the 20th century the principle that democracy is government by the people, so it takes as much as possible and as deep as possible the participation of the community in making decisions and in the formation of rules.³²

Regional regulations are one of the products of legislation in Indonesia as regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law Number 15 of 2019. The starting point of the formulation of local regulations is the effectiveness and efficiency of the community. The basic purpose of community participation is to produce useful inputs and perceptions from citizens and the community concerned (*publik interest*) in order to improve the quality of decision making, because by involving people affected by the policy and interest groups decision makers can capture the views, needs and appreciation of the community and the group, and then put it into one concept.³³

Related to public participation in the formation of legislation as regulated in Article 96 of Law Number 11 Year 2011 concerning the Formation of Laws and Regulations. This can also be found in Article 53 of Law Number 10 Year 2004 Concerning Formation of Regulations, which was previously used as a reference in the formation of laws and regulations. In Article 53 which states that the public has the right to provide input orally or in writing in the framework of the determination and discussion of the draft law and draft regional regulations. Furthermore, Law Number 23 of 2014 states that the community's right to participate in providing input orally or in writing in the context of preparation or discussion of a draft local regulation.³⁴

Public participation in the formation of legislation can be interpreted as political participation, by Huntington and Nelson political participation is defined as the activities of civilians (*privetecitizen*) which aims to influence government decision making.³⁵ The form of community participation in government, especially in the formation of regional regulations varies greatly, depending on the situation and conditions in a place and time. Iza Rumesten believes that in order to achieve the objectives of the laws and regulations, especially the regional regulations, the first requirement that must be met is the involvement of the people or community in a process of forming regional regulations starting from the formation process, the implementation process in the field and finally the evaluation stage.³⁶

In connection with community participation in the formation of regional regulations, it is also necessary to state the views of M. Ridwan Tjandra and Kresno Budi Sudarsono in their book *legislative drafting* which confirms there are three accesses (*treeaccesses*) which needs to be provided for the community in the administration of government. That is:³⁷

³² Munir Fuady, Op. Cit, page. 136.

³³ Praptanugraha, Community Participation in the Formation of Regional Regulations, published in Journal of Law Number 3 Vol 15 July 2008, Faculty of Law, Islamic University of Indonesia, page. 469.

³⁴ Article 354 of Law Number 23 of 2014 concerning Regional Government (Republic of Indonesia, 2014).

³⁵ Iza Rumesten, Ideal Model for Community Participation in the Formation of Regional Regulations, Faculty of Law, Sriwijaya University, p. 4

³⁶ *Ibid*

³⁷ *Ibid*

1. Access to information includes two types, namely the right to passive information access and the right to active information.
2. Access to participation in decision transfer (*public participation in decision making*) includes the right of the community to influence decision making, participation in the establishment of policies, plans and development programs and participation in the formation of laws and regulations.
3. Access to justice the justice pillar also provides a mechanism for public to enforce environmental law directly. Its basic nature and participation are openness and transparency.

The aspirations of the people in the formation of regions can be more accommodated compared to the aspirations of the people in the formation of laws. Because there is regional autonomy which brings decision makers closer to the people.³⁸ Participation is intended as the participation of parties outside the Regional House of Representatives and the regional government in drafting and forming a draft local regulation According to Bagir Manan There are two sources of participation; first, from the elements of government outside the Regional House of Representatives and regional governments, such as the police, prosecutors, courts, universities and others. Both from the community, both individuals such as experts or who have experience or from groups such as Non-Governmental Organizations.³⁹ In general, the involvement of other interest groups (stakeholder) includes: organizations, professions, practitioners, indigenous peoples, etc. depend on the issue and the characteristics of the regional regulations made.⁴⁰

According to Sirajudin, there are at least 8 (eight) principles regarding the form of community participation in the formation of regional regulations:⁴¹

1. There is an effective publication obligation
2. There is a need for systematic information and documentation
3. Guarantees open and effective procedures and forums for the community to be involved in overseeing the process from the planning stage.
4. There is a procedure that guarantees that the public can submit a draft regional regulation other than members of the Regional House of Representatives and the government
5. There are clear arrangements regarding basic documents that must be available and accessible such as academic texts and draft local regulations
6. There is a guarantee of appeal to the public if the process of forming regional regulations is not carried out in a participatory manner.
7. There is an adequate period of time for the entire process of drafting, discussing the draft regional regulations and disseminating the regional regulations that have been carried out
8. There is clear and adequate accountability for the process of forming local regulations that deliberately close the opportunity for communities to participate.

If the government's obligation to facilitate the community has been fulfilled, then it becomes an obligation for the community to be able to utilize the facility effectively in order to become a force of control and be a supervisor for the policies issued by the government and the Regional House of Representatives. The parties involved in implementing the most important community participation are

³⁸ Praptanugraha, Op.Cit., P. 460.

³⁹ Manan, Bagir, Welcoming the Dawn of Regional Autonomy, Law Study Center, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2005. P. 36

⁴⁰ Charles Simabura, Op.Cit., P. 54.

⁴¹ *Ibid*

the community itself. Thus it is more appropriate if community participation is not carried out by means of representation. According to Iza Rumesten, participation is not enough to only be done by a group of people who are seated in a representative institution in the district or city because institutions and people who sit in representative institutions often use politics in the name of the interests of the people to fight for their own personal or group interests.⁴²

Conclusion

Direct people's participation, according to Alexander Abe in his participatory regional planning book, brought three important impacts:⁴³

1. Community participation in the formation of Regional Regulation No. 8 of 2009 concerning Non-Smoking Areas and the Orderly Friends of Cigarettes is still limited to the formation of the draft regional regulation, although there are ways in which the government has planned the forming of this regional regulation. Like holding seminars, meeting citizens and dialogue with the community. But the weakness still lies in the plenary session, indeed the public attended the hearing but was still representative, not all the people knew about the trial and there were even people who did not know the draft local regulation.
2. Formation of laws and regulations without community participation can result in procedural defects. Procedural defects occur because there are formal aspects that are not in accordance with the procedures for establishing laws and regulations. Community participation is one of the principles in the formation of laws and regulations and has obtained a constitutional basis in the 1945 Constitution. Community participation in the formation of regional regulations has a strong legal basis. It is explicitly not mentioned nor explained in the 1945 Constitution but only stated explicitly in Law Number 12 of 2011 concerning the Formation of Legislation, but still the constitutional basis lies in the 1945 Constitution of Article 22 A which explains that further provisions regarding the procedure for the formation of legislation are regulated by law. And the governing law is Law Number 12 of 2011 concerning the Formation of Regulations and Regulations. So ignoring public participation in the formation of legislation can result in procedural defects.
3. Community participation can take place in several forms not only focused on community participation in the formation of laws and regulations. It could be, before the drafting of laws and regulations was formed that there was already community participation. Like the people's discussion, the seminar which was held to form a draft legislation, gathered together with the government and the Regional House of Representatives. Because the smoothness of a regulation depends on the extent to which the public participates and knows the regulation.

⁴² *Ibid*

⁴³ *Ibid.*, P. 9

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Suir Syam, served as Major of Padang Panjang for 2 periods namely, the 2004-2009 period and the 2009-2014 period.

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