

Public Participation' Development in Trenggalek Regency' Legal Drafting Through Support Budgeting

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Doi: 10.19044/esj.2018.v14n7p305 [URL:http://dx.doi.org/10.19044/esj.2018.v14n7p305](http://dx.doi.org/10.19044/esj.2018.v14n7p305)

Abstract

This paper focuses on explaining the idea of developing public participation in Trenggalek Regency' legal drafting through support budgeting. The results of the study is based on the budgeting support' model for the participation of the public through the Region Revenues and Expenditures Budget (APBD) which was further analyzed through the theory of participation and the theory of law enforcement. The results show that support budgeting is still centered on the activities of regulators and has not yet created a budgeting system that is aimed specifically towards the development of public' participation. There has not been a good application yet of the theory of participation and the theory of law enforcement in the preparation of APBD. This, however, is attributed to the fact that the budget system has not fully supported the development of Public participation in the regional regulations' drafting. This problem can be solved with a good and same understanding about the meaningful Public participation in the regional regulations' drafting among the regulators.

Keywords: Public participation, Trenggalek, legal drafting, budgeting support

Introduction

The democratic state as expressed by Abraham Lincoln asserts the principle of government of the people, by the people, and for the people (Hermawan & Masdar, 2000). Asshiddiqie (2010), one of a constitutional law expert, also supported the Lincoln's teachings. However, that principle created the concept of participation of the public in the process of state governance. State governance in the broadest sense includes the power of making law, including legislation and regulation, the power to implementing law, and making policies for the welfare of public and the power of law enforcement agent (The theory of Trias Politica, quoted by Utrechtand van Volenhoven,

1960; by Asshiddiqie, 2010). However, this paper focuses on the public participation in the power of making law.

In Indonesia, that participation has been regulated in Article 96 of Law Number 12 of 2011 on the Establishment of Laws and Regulations. In that Article, the concept of public participation is defined as the right to participate in the legal drafting process. Such right is technically feasible and is implemented through: (a) a public hearing; (b) institution working visit; (c) socialization; and/or (d) seminars, workshops, and/or discussions. In the light of facilitating the public to participate, the legal drafting process must be accessible easily by the public.

Ibrahim (2008) found that in several regions in East Java, namely Probolinggo, Madiun, Sidoarjo and Blitar, public participation was still low in the regional legal drafting process. This paper explains how the Local Government of Trenggalek Regency tried to facilitate public participation through budgeting support in APBD. The first section describes the practice of budgeting support in Trenggalek Regency as an effort to develop public participation in legal drafting process. The second section describes the remaining constraints in the effort to provide budget support through APBD. The third section describes the analysis and discussion around the effort to enforce the theory of participation based on the constraints that has been found.

Methods

Empirical legal research was conducted at the Trenggalek Regency to take the data of the budgeting support and the remaining constraints of it. However, this is based on the research followed by normative legal research to explore the theory of participation, the democracy principles, stakeholder's principles, political ethics, and law enforcement, and how it may be used to overcome the remaining constraints.

Part One: Budgeting Support for Public Participation through APBD

Regional regulation is one of the local legislation that was developed and implemented in the Local Government, such as Trenggalek Regency. Article 96 of Law Number 12 of 2011 as provided in the right of public participation in legal drafting process is also applicable for regional legal drafting process. Public participation in regional legal drafting process is reaffirmed in Article 237 Paragraph (3) of Law Number 23 of 2014 on Regional Government. This states that the public is entitled to give oral and/or written feedback based on the formation of regional regulations. This shows how the Central Government are willingly to give space for public participation for the good governance process, especially in the regional legal drafting process.

Article 96 of Law 12 of 2011 only determines the spaces for public to participate, namely in (a) a public hearing; (b) institution working visit; (c)

socialization; and/or (d) seminars, workshops, and/or discussions. This kind of spaces for participation, as opined by Ahmad et al. (2003), are still on the medium or pseudo-participation level, and they include the public's informing and consulting. At that level of participation, there is no guarantee whether the public proposals are taken into account in the decision making process. There is no further provision on how many people are invited to participate, how do the public escort their ideas in the legal drafting process, and how do the government give budget support for public participation. Thus, the absence of such provisions has led to different interpretation and practice at each region.

This problem was also stated by Tjandra and Darsono (2009: 71): “the provision does not regulate the way or method of implementing public participation in legal drafting process, so that the method in practices are based on their own interpretation and innovation.”

Manan (2001) attempts to detail the forms of public participation level to guarantee whether their proposals are taken into account in the decision making process, through:

1. including the public in the team or working group in the preparation of regional legal drafting;
2. conducting public hearings or inviting every regional legal drafting process' meetings;
3. performing valid test from certain parties in accordance to getting a better quality of the content;
4. undertake workshops (workshops) for public input before further discussion by regulators;
5. publishing the draft to get public response.

Consequently, if such levels of public participation are used in regional legal drafting, the outcome will be more accommodating and would be in accordance with the public interest.

Based on the framework of public participation, Saragih (2011) suggests, among other things, to place the position of the public in accordance with their rights and obligations. Therefore, this is seen as the development actors which have to be facilitated by the government. One of the kind of facilitation is by allocating budget to support it. According to the state budgeting system, supporting budget should be incorporated into the Regional Revenue and Expenditure Budget (APBD in Indonesia'term). This is in accordance with the provisions of Article 3 Paragraph (6) of Law 17 of 2003 on State Finance. Is this already considered by Regencies in practice? Below will be described the practice of incorporating the budget through APBD in Trenggalek Regency as an effort to support public participation.

Trenggalek Regency has prepared the Regional Legislation Program for 2016 (quoted from Legal Documentation and Information Network of East Java Province), namely: the regulation on:

- a. Organizational Structure and its Formation.
- b. Treatment of Infectious Diseases.
- c. Implementation of Education.
- d. Street.
- e. Trash.
- f. Prevention and Control of Abuse and Illicit Circulation of Narcotics, Psychotropic and Addictive Substances.
- g. Establishment of Village Law Products.

For 2015 (quoted from Legal Documentation and Information Network of East Java Province), there are some proposals for the Regional Legislation Program that was initiated by the Regional People's Representative Assembly (DPRD in Indonesia'term) of Trenggalek Regency, which include:

- a. Corporate social responsibility.
- b. River Crossing.
- c. Sustainable Land Farming Protection.
- d. Amendment to Local Regulation No. 11 Year 2012 on Working Relationships Among Local Government Organizer.
- e. Regional Loan.
- f. Regional Cooperation.

Subsequently, most of these drafts were used to obtain the provisions of public interest. On behalf of the democracy principles and stakeholders principles, the public as stakeholders are entitled to be included in the process of those legal drafting. The regulation will be willingly accepted by the public since they participated in determining the substance. Public participation implements political ethics which places the people or public to be a source of power and sovereignty (Putra, et al., 2007). Bureaucratic orientation is no longer a service provider, but is rather a facilitator to realize public participation (Tjandra & Darsono, 2009).

The tasks and functions in making local regulations in Trenggalek Regency are entitled by the Legal Division of the Secretariat of Trenggalek Regency and the Legislation Division of the Regional People's Representative Assembly. Based on the number of local regulations and the amount of the budget set in APBD of Trenggalek Regency, as well as the confirmation from the Head of Legislation Division and Capacity Building of Regional People's Representative Assembly (represented by Kurniayu Fatmasari, SH) and Head of Legal Division and Human Rights of the Local Representative of Department of Law and Human Rights (represented Sri Pondiyati), on 6 May 2017, the following facts can be described as shown below:

1. There was a significant increase in the amount of budget based on the activities of:
 - a. meetings and discussions for the regional regulation'drafting process,

- b. drafting of regional regulations initiative by DPRD, and
 - c. legislation of laws and regulations.
2. There were already several planned budgets to facilitate public participation in the regional legal' drafting process, but not directly. The budget is still saved in the budget for the DPRD Secretariat which are for financing the meeting, working visit, and hearing/socialization.
 3. There was no special budget point addressed to the public participation in the process of legal drafting with all the details of both objectives, outputs, outcomes, and impacts of public participation in the process of local regulation' drafting.
 4. There was a budget facilitation to carry out public participation, but still for the level of informing and consultation as the middle level of public participation.

Based on that fact, there are two things to remember. First, the burden to conduct public participation was still done only by the Secretariat of Trenggalek Regency, while there are other organizational units who also have the same tasks and functions to conduct the same thing. Secondly, the public participation programme has not yet been an independent budget system, but is still seen as an additional activity that is inserted into the activities of the DPRD Secretariat.

Part Two: Budget Constraints in Accordance to Develop Public Participation

Based on the analysis of APBD documents and confirmation with several related parties, there are several constraints for APBD to create supporting budget to develop public participation in regional legal drafting process in Trenggalek Regency. These constraints can be classified into three groups, namely: theoretical constraints, juridical constraints, and technical constraints.

1. Theoretical Constraints

Participation theory has not been properly understood such that the amount of budget and the address of budget in APBD Trenggalek Regency has not been supported yet for public participation. According to the theory of participation, public participation must exist in the state governance. The public participation in the context of relations between the government and citizens, put citizens in four position. First, as a citizens, not as a servant (client). Second, as a partner of government in managing governance and development. Third, as a citizen's right, not as a gift by the government. Fourth, as an actor or subject that actively determines the policy (Farhan, quoted in Tjandra & Darsono, 2009).

The sociological side of the theory of law enforcement states that the contents of the law have to be recognised by the people to make it work

effectively (Soekanto & Purbacaraka., 1993). Nevertheless, this sociological enforcement depends on the recognition and acceptance by society. Therefore, in the legislation' drafting process, the public should be involved. If the creators of APBD had understood this theory, the budget would be better facilitated then.

2. Juridical Constraints

Juridically, there are obstacles that hamper efforts to increase public participation in the process of legal drafting. Law Number 12 Year 2011 provides alternative events for public participation in legal drafting. However, there are no technical rules that further regulate its implementation. It is still ongoing until this research was made. Government officials become confused and didn't take the initiative to make policy, for example to create a special budget to support the activities of public participation in APBD.

3. Operational Technical Constraints

There is an important operational technical constraints to optimize the budget in APBD Trenggalek Regency to develop public participation in regional legal drafting process: the lack of understanding of the forms of public participation activities in regional legal drafting process. Some important positions parties (Head of Legal and Human Rights Division, Head of Legislation and Capacity Building, DPRD Members of Trenggalek Regency) didn't give any explanation other than two events for public participation activities: in institution working visit and in public hearings/socialization. This is attributed to the fact that there are several other forms of public participation that are sustainable in guarding the substance of local regulations as Manan stated (2001). Thus, this affected its support in budget.

Part Three: Discussion and Proposal to Overcome Budget Constraints to Develop Public Participation of the Local Regulation' Drafting Process

Based on the constraints found, there are several things that can be proposed, namely:

1. Building the capacity of regulators for better understanding of the importance of public participation and its participation levels to control the substance of local regulations.
2. It is necessary to amend Law Number 12 Year 2011 by including additional provisions which expressly oblige the government to accommodate and facilitate the right of public participation in the legislation' drafting process. While waiting for the reform of the Act, the Government of Trenggalek Regency can make discretion, as permitted by Article 1 Point 9 of Law 30 of 2014, which determines that discretion is a decision and/or action determined and/or performed by government officials to overcome concrete

problems encountered in the administration of government in terms of laws that provide choice, not regulation, incomplete or unclear, and/or government stagnation.

All discretion or the policies made by the local government of Trenggalek Regency Government has its validity and can be enforced. Other than discretion, the Local Government and the Local People's Legislative Assembly of Trenggalek Regency may also use their authority to establish a Regional Regulation. This regulation, however, considers the following:

- a. What type of local regulations should include the public participation in its drafting process, and which types should not?
- b. What types and forms of public participation are sustainable in guarding the substance of each local regulations' drafting?
- c. The obligation of local governments to support budget sufficiently in order to facilitate public participation in the local regulations' drafting process.

3. Efforts to Overcome Technical Operational Constraints

The parties involved in the making of local regulation, and allocating budget for the local regulations' drafting process, should open a discussion to deepen and equate perceptions of the forms of public participation in the local regulation' drafting process. They should discuss the cost estimation, and formulate the objectives, targets, outputs, and outcomes in order to set a better budgeting support to develop the most effective and efficient way to facilitate public participation. Budget constraints can be overcome by making priority scale on local regulation' drafting, and by reducing expenditures that are considered to be ineffective in achieving the objectives.

Conclusion

Based on the Results and Discussion, it can be concluded that the APBD of Trenggalek Regency is one that has tried to facilitate the implementation of public participation through budgeting support, but has not been optimum yet. Hence, there are still some constraints to make it optimum. These constraints can be overcome with several alternative proposal.

References:

Books

1. Asshiddiqie Jimly (2010). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta: Sinar Grafika.
2. Ahmad Rival, G. dkk (2003). *Dari Parlemen ke Ruang Publik: Menggagas Penyusunan Kebijakan Partisipatif dalam Jurnal Hukum Jentera Edisi ke 2 Tahun 2003*, Jakarta: PSHK.

3. Hermawan Eman dan Umaruddin Masdar (2004). *Demokrasi Untuk Pemula*, Yogyakarta: Yayasan Kajian dan Layanan Informasi Untuk Kedaulatan Rakyat (KLIK).
4. Ibrahim Anis (2008). *Legislasi dan Demokrasi, Interaksi dan Konfigurasi Politik Hukum dalam Pembentukan Hukum di Daerah*, Cet. I, Malang: In-Trans Publishing.
5. Putra Kurnia Mahendra, Purwanto, Emilda Kuspraningrum, & Ivan Zairani Lisi (2007). *Pedoman Naskah Akademik Perda Partisipatif*, Yogyakarta: Penerbit Total Media.
6. Manan Bagir (2001). *Menyongsong Fajar Otonomi Daerah*, Yogyakarta: Pusat Studi Hukum (PSH) UI.
7. Soekanto, Soerjono & Purnadi Purbacaraka (1993). *Perihal Kaidah Hukum*, Bandung: Citra Aditya Bakti.
8. Tjandra W. Riawan dan Kresno Budi Darsono (2009). *Legislative Drafting Teori dan Teknik Pembuatan Peraturan Daerah*, Yogyakarta: Universitas Atma Jaya Yogyakarta.
9. Utrecht, E. (1960). *Pengantar Hukum Administrasi Negara Indonesia*, Cet. 4, Bandung: FHPM Univ. Padjajaran.

Website

10. www.jdih.jatimprov.go.id

Journal

11. Saragih Tomy, M. (2011). *Konsep Partisipasi Masyarakat dalam Pembentukan Peraturan Daerah Rencana Detail Tata Ruang dan Kawasan*, Jurnal Sasi Vol. 17 No. 3 Bulan Juli-September 2011, Universitas Pattimura, Ambon.

Laws

12. Law Number 23 of 2014 on the Local Government.
13. Law Number 12 of 2011 on the Formulation of Legislation.
14. Law Number 17 of 2003 on State Finance.