

## Research Article

# Establishment of Democratic Regional Regulations in Bandung District

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**ORCID**Nia Nindhiawati: <https://orcid.org/0009-0003-4402-4039>**Abstract.**

This research was conducted in Bandung Regency. The formation of democratic regional regulations by the Bandung Regency government has not been implemented democratically because community participation, as a form of democracy in the process of forming regional regulations, is only ceremonial. As a result, the space for the community to participate in responding or directly criticizing a regional policy packaged in regional regulations cannot be fully utilized. Several factors influence the formation of regional regulations. One of the main factors is the legal structure, where the Regional Government and DPRD do not provide sufficient space for the community to express their aspirations. The time allocated for discussing the legal substance during the process is also very limited, which hinders the full application of democratic principles as outlined in the Act. The research utilized an empirical approach with direct research and was documented as it is. It was found that the formation of legislation in the region is still relatively limited because the publication of regional regulations to the public is not considered a necessity. Additionally, the legal culture of the community, particularly community participation, is still poorly understood and needs further development.

**Keywords:** regional regulations, democratic, local government

## 1. INTRODUCTION

According to Law Number 15 of 2019 and Regulation of the Minister of Home Affairs Number 120 of 2018 concerning the Establishment of Regional Legal Products, district/city governments have several functions and one of them is the function of legislation as the main vehicle for reflecting the aspirations and interests of the people [1]. The function of legislation in this case is regional regulations (perda). One of the means in the framework of implementing regional autonomy and co-administration is the establishment of Regional Regulations [2]. General explanation of Law Number 9 of 2015 concerning Regional Government “The implementation of regional governments in carrying out their duties, authorities, obligations and responsibilities as well as on

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the authority of higher laws and regulations can determine regional policies which are formulated, among others, in regional regulations [3]. Regional Regulation is an instrument/equipment used to support the administration of local government. Regions in carrying out government affairs under their authority, to improve services and to increase community participation in regional development implemented in regional regulations [4]. The content of the regional regulations themselves may involve the implementation of regional autonomy, assistance tasks, special regional conditions and/or further elaboration of higher laws and regulations [5]. The preparation of the Draft Regional Regulation is carried out with the intention of implementing the statutory provisions, then the regional head together with the DPRD shall stipulate regional regulations, which are intended to further regulate higher laws and regulations in the context of implementing regional autonomy [6]. The implementation of regional regulations sometimes causes problems so that they are considered for cancellation. The cancellation is carried out by the Governor as the representative of the central government which is stipulated by a Governor's Decree, canceled by the Minister of Home Affairs. So that the authority to cancel regional regulations lies with the Minister of Home Affairs and the governor. The implementation of the legislative function of the Bandung Regency government in forming Regional Regulations still needs to be improved both in terms of quality and quantity. The implementation of the substance of regional regulations needs to be optimized. Based on these problems the authors are interested in examining how the formation of democratic regional regulations in Bandung Regency and the factors that cause it?

The method in research using quantitative research views social reality and human behavior as objective and measurable [7]. It was carried out by focusing the attention of researchers on the application of the principles of democratic legislation in the formation of regional regulations by the local government of Bandung Regency. Likewise, all the factors that influence the formation of local regulations in Bandung Regency. Sampling is done in certain ways and the object of research is grouped based on the characteristics, nature and role [8]. In this connection all the factors that are thought to influence the implementation of the formation of democratic regional regulations by the local government of Bandung Regency. These factors will be observed one by one, namely: legal substance factor, legal structure factor, and legal culture factor. The literature in this study uses Law Number 15 of 2019 and Regulation of the Minister of Home Affairs Number 120 of 2018 concerning the Establishment of Regional Legal Products. The data taken is based on direct information and data from the Bandung Regency DPRD.

The content of regional regulations must reflect the principles of protection, humanity, nationality, kinship, archipelago, diversity in diversity, justice, equality in law and government, order and legal certainty and balance, harmony and harmony [9]. This principle aims to ensure that a regional regulation does not conflict with the provisions of higher laws and regulations, the public interest, and/or decency. Contradicting the public interest includes disruption of harmony between members of the community, disruption of access to public services, disruption of peace and public order, disruption of economic activities to improve people's welfare and/or discrimination against ethnicity, religion and belief, race, inter-group, and gender [10]. Community participation in the process of forming Regional Regulations is the actualization of the realization of democracy in society, so that the regional regulations that are born will have a responsive character that has a goal for human welfare and happiness and includes the participation of social groups or individuals in society [11]. And the rulers no longer use arbitrary power because there is a commitment poured out by the community to exercise power in accordance with regulated procedures. The guarantee and part of the legal basis for the community to participate in the process of making laws are emphasized in Article 96 of Law Number 12 of 2011 concerning the Establishment of Legislation which requires public participation in the framework of drafting laws, either orally or in writing in the formation of legislation. -invitation [12]. However, sometimes the reality that occurs during the public examination process and the discussion of draft regional regulations is that sometimes the community is not involved in these activities, which in the end the aspirations that will be conveyed are associated with the process of preparing the draft regional regulations that are not in accordance with the legal needs of the community. Regional regulations that are not in accordance with the legal needs of the community will cause problems so that they are considered for cancellation. The cancellation is carried out by the Governor as a representative of the central government which is stipulated by a Governor's Decree. Furthermore, it is also regulated in the provisions of Article 251 paragraph (3) of Law Number 23 of 2014 concerning Regional Government, in the event that the Governor does not cancel the said regulation will be canceled by the Minister of Home Affairs. So that the authority to cancel regional regulations lies with the Minister of Home Affairs and the governor. The implementation of the legislation *function* that is owned or is the authority of the Bandung Regency Government in forming Regional Regulations still needs to be improved both in terms of quality and quantity. In the process of drafting regional regulations originating from the Regional Government, it can be seen in the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products

which has been amended by Regulation of the Minister of Home Affairs Number 120 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment Regional Legal Products stipulated on December 17, 2018. Based on Article 17 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products, the provisions regarding the planning procedures for the preparation of the Provincial Propemperda as referred to in Article 10 to Article 16 apply mutatis mutandis to planning for the preparation of district/city Propemperda.

The process of drafting Regency/City Regional Regulations in accordance with Law Number 12 of 2011 concerning the Establishment of Legislation, is as follows:

- i. Draft Regency/City Regional Regulations can be proposed by Regency/City DPRD or Regent/Mayor.
- ii. If the draft is proposed by the Regency/Municipal DPRD, the drafting process is:
  - A. The Regency/Municipal DPRD submits a draft regional regulation to the Regent/Mayor in writing.
  - B. The Regency/City DPRD together with the Regent/Mayor discuss the draft Regency/City regional regulation.
  - C. If the draft regional regulation obtains mutual approval, it is ratified by the regent/mayor to become a regency/municipal regional regulation.
- iii. If the draft is proposed by the Regent/Mayor, the drafting process is as follows:
  - A. The Regent/Mayor submits a draft regional regulation to the Regency/Municipal DPRD in writing.
  - B. The Regency/City DPRD together with the Regent/Mayor discuss the draft Regency/City regional regulation.
  - C. If the draft regional regulation obtains mutual approval, it is ratified by the regent/mayor to become a regency/municipal regional regulation.

The use of principles in the formation of statutory regulations is in principle a must, because the basic principles in the formation of regulations, both the principle as the basis for the formation and the basic principle in the content of the legislation made.

A review of the existence of participatory democratic regional law regulations is seen from the implementation of the principle of openness in the formation of regional legal regulations. In the initial discussion, the procedures and mechanisms for the formation

of regional legal regulations have been described in detail. There are differences in the procedures and mechanisms for the formation of regional legal regulations based on the types of regional legal regulations. The procedures and mechanisms for the formation of Regional Regulations are different from the procedures and mechanisms for the formation of Regional Head Decrees. In the procedure for the formation of Regional Regulations, several stages are passed, namely the stage of drafting, the stage of discussion and the final stage of determining the draft of the regional regulation into a regional regulation. Draft regional regulations can come from the regional head and can come from DPRD initiatives (Head of Legislation Section Legal Section of the Regional Secretariat). Draft regional regulations originating from regional heads, the main points of the draft regional regulations are prepared by the work unit. Furthermore, it is submitted to the legal department to obtain a juridical response regarding the material, composition or form and language. Then it is submitted back to the agency or work unit that proposes it to be perfected. After that, it is submitted to the regional head for approval (Head of Legislation Section Legal Section of the Regional Secretariat). The draft Regional Regulation that has received approval from the regional head is then submitted to the DPRD with a letter from the Regional Secretary. Then the draft regional regulation is held pre-discussion. The pre-discussion was followed by the work unit working on the Raperda, related work units, the DPRD which is usually represented by a Team or Special Committee, community leaders and Non-Governmental Organizations (NGOs), (Head of Sub-department of Legislation, Legal Section of the Regional Secretariat).

Draft Regional Regulation originating from the DPRD initiative proposal. The proposed initiative is submitted to the leadership of the DPRD in the form of a draft regional regulation accompanied by a written explanation. Then the draft regional regulation proposed by the DPRD is given a key number by the DPRD Secretariat. And the proposed regional regulation draft by the DPRD leadership is submitted in a DPRD leadership meeting, the proposers are given the opportunity to explain the draft regional regulation proposed by the DPRD. Discussions about something for the initiative are carried out by providing views and the regional head to provide opinions and the proposers to provide answers to the views of other DPRD members and the regional heads' opinions. The discussion ends with the provision that the DPRD accepts or rejects the proposal for the initiative to become the DPRD's initiative (Regional Orders of the DPRD). Draft regional regulations, both those originating from regional heads and those originating from DPRD initiatives, are discussed. The discussion of the draft regional regulations is carried out with commissions, namely Commission A in charge of

Government, Population, Civil Defense, Land, Public Order, Public Relations, Information / Press, Law / Legislation, Human Resources, Social and Political Affairs, Organizations and Bappeda (Order Regulations). DPRD). The procedure for submitting draft regional regulations is as follows. Draft regional regulations originating from the Regional Head are submitted to the DPRD Leadership with a Regional Head Letter. The Draft Regional Regulation originating from the DPRD Initiative proposal and its explanation shall be submitted in writing to the Regional Head. The Draft Regional Regulation originating from the Regional Head and the proposed DPRD initiative is submitted by the DPRD leadership to all DPRD members no later than 7 (seven) days before the meeting is held (DPRD Regulations). If there are 2 (two) Draft Regional Regulations submitted regarding the same matter and at the same time, then what is discussed is the draft Regional Regulation which is received first, and the Draft Regional Regulation which is received is then used as a complement. The discussion of the Draft Regional Regulation is carried out through 4 (four) stages, namely Stages I, II, III, IV unless the Deliberation Committee determines otherwise. Prior to the stage II discussion, it is conducted in a Commission Meeting/Combined Commission Meeting or in a Special Committee Meeting. Phase I discussions include: explanation of the regional head in the plenary session of the draft regional regulation originating from the regional head; Explanation in the Plenary Meeting by the Chairperson of the Commission/Combined Meeting of the Commission or the Chairperson of the Special Committee on behalf of the DPRD on the proposed Draft Regional Regulation. Phase II discussions include: First, in terms of submitting the Regional Regulation Draft originating from the Regional Head, it begins with the general view in the Plenary Meeting by the factions on the Regional Regulation Draft, then the Regional Head's response in the Plenary Meeting to the General Views of the Factions. Second, in the case of submitting a draft Regional Regulation on the initiative of the DPRD, it begins with the submission of the opinion of the Regional Head in the Plenary Meeting on the Draft Regional Regulation proposed by the DPRD, then the answers from the Chairperson of the Commission/Combined Meeting of the Commission or the Chairperson of the Special Committee on behalf of the DPRD in the Plenary Meeting on the opinion of the Regional Head. Phase III discussions are discussions in Commission Meetings/Combined Commission Meetings or Special Committee Meetings conducted together with Regional Officials appointed by the Regional Head. Stage IV discussions include, First, decision-making in the Plenary Meeting which is preceded by a report on the results of stage III discussions and the final opinion of the factions. Second, giving the opportunity to the Regional Head to deliver his remarks on the decision making.

Regional Regulations that have obtained DPRD approval are signed by the Regional Head. The approval of the DPRD is determined by a DPRD Decree. The Regional Head with the approval of the DPRD shall stipulate a Regional Regulation. Draft Regional Regulations can come from the Regional Head or at the initiative of the DPRD. The Regional Regulation is signed by the Regional Head. The approval of the DPRD is stipulated in a DPRD Decree. Meetings to discuss the Draft Regional Regulation concerning the Regional Revenue and Expenditure Budget are held in a special meeting convened for that purpose. The procedures for the formation of regional head decisions, both regulatory in nature and material determination (*beschikking*), are entirely prepared by regional heads, namely work units that require regulation of certain matters through regional head decisions. The draft regional head decision does not require pre-discussion as in the draft regional regulation. Regarding a draft regional head decision, it can be discussed in the commissions in charge of law and legislation, namely Commission A. However, in reality it is very rare to discuss the draft regional head decision in the DPRD, but it is enough to ask for consideration. Based on these descriptions, normatively, the principle of openness is regulated in the DPRD Rules of Procedure which states that every trial meeting is open to the public. However, empirically the implementation of the principle of openness is still very limited so that the existence of participatory democratic regional laws is very difficult to realize. This is evident from the procedure for establishing regional legal regulations, both in the procedure and in registration.

Openness in the procedure for establishing regional legal regulations allows the community to participate in deliberation at each stage of the Discussion Meeting Session on a Draft Regional Regulation both at the pre-discussion (executive) level and discussion in the legislative body (DPRD). Openness in the procedure for establishing regional legal regulations allows the community to participate in making decisions in the context of implementation. With the space to participate in deciding, the people will feel bound both morally and legally, there is an obligation or obligation to take responsibility for the implementation of a regional legal regulation. Based on these various descriptions, it can be seen that:

- (a) The regulation of community participation in the formation of regional legal regulations is still very vague, namely in the TATIB DPRD, but the community is not given the opportunity to participate directly, but is limited only as spectators;
- (b) Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding and participating in providing



support and or rejection of a regional policy that is packaged in a legal regulation.

Regional legal regulations that are participatory in nature are seen from the implementation of the principle of openness in the formation of regional legal regulations. In the initial discussion, the procedures and mechanisms for the formation of regional legal regulations have been described in detail. There are differences in the procedures and mechanisms for the formation of regional legal regulations based on the types of regional legal regulations. The procedures and mechanisms for the formation of Regional Regulations are different from the procedures and mechanisms for the formation of Regional Head Decrees. In the procedure for the formation of Regional Regulations, several stages are passed, namely the stage of drafting, the stage of discussion and the final stage of determining the draft of the regional regulation into a regional regulation. Draft regional regulations can come from the regional head and can come from DPRD initiatives (Head of Legislation Section Legal Section of the Regional Secretariat). The use of principles in the formation of statutory regulations is in principle a must, because the basic principles in the formation of regulations, both the principle as the basis for the formation and the basic principle in the content of the legislation made. Related to this, the following table describes the views of respondents regarding the importance of using principles in the formation of regulations including regional regulations as follows:

Table of Respondents' Responses on the Use of Principles of Legislation in the Formation of Regional Regulations;

TABLE 1

	No. Indicator	Frequency	Percentage (%)
1. Appropriate	20		80
2. Not Appropriate	3		12
3. Not Appropriate	2		8
Total	25		100

Primary data after being processed in 2020

From table 1 shows that regarding the use of the principles of legislation, the correct answer is 20 or 80% of the total number of respondents, 3 or 12% less appropriate answers and 2 or 8% inappropriate answers. Draft regional regulations originating from regional heads, the main points of the draft regional regulations are prepared by the work unit. Furthermore, it is submitted to the legal department to obtain a juridical response regarding the material, composition or form and language. Then it is submitted back to the agency or work unit that proposes it to be perfected. After



that, it is submitted to the regional head for approval (Head of Legislation Section Legal Section of the Regional Secretariat). The draft Regional Regulation that has received approval from the regional head is then submitted to the DPRD with a letter from the Regional Secretary. Then the draft regional regulation is held pre-discussion. The pre-discussion was followed by the work unit working on the Raperda, related work units, the DPRD which is usually represented by a Team or Special Committee, community leaders and Non-Governmental Organizations (NGOs), (Head of Sub-department of Legislation, Legal Section of the Regional Secretariat).

The application of the principles of democratic legislation in the formation of regional regulations by the local government of Bandung Regency has not been implemented democratically due to community participation as a form of democracy in the process of forming regional regulations only ceremonial so that there is room for aspirations for the community to participate in responding or criticizing directly a regional policy that packaged in local regulations cannot be implemented. Factors that influence the formation of local regulations in Bandung Regency are the legal structure factor, namely the local government and DPRD do not provide space for the community to express their aspirations, the legal substance, namely the democratic principle as outlined in the Law on the Establishment of Legislation is still relatively relative due to publications. Local regulations to the community are not a necessity and the legal culture of the community is that community participation is still poorly understood so that they are less concerned about the formation of regional regulations.

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