

Fungsi Naskah Akademik dalam Pembentukan Peraturan Perundang-undangan sebagai Cerminan Politik dan Hukum

Aisyah Oktavia Dewi^{1*}, Tasya Amanda Mahdalena², Yuanita Ayu Virli³, Nayla Zhei Aurel Meilan Permana⁴, Ratna Christanti Sari Dewi⁵

¹Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, E-mail: 24071010080@student.upnjatim.ac.id

²Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, E-mail: 24071010082@student.upnjatim.ac.id

³Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jawa Timur, Indonesia, E-mail: 24071010252@student.upnjatim.ac.id

⁴Faculty of Social and Political Sciences, Universitas Negeri Surabaya Jawa Timur, Indonesia, E-mail: 24041614128@mhs.unesa.ac.id

⁵Faculty of Social and Political Sciences, Universitas Negeri Surabaya Jawa Timur, Indonesia, E-mail: 24041614131@mhs.unesa.ac.id

Abstract

Academic Paper is a paper derived from the results of research or legal studies on a particular problem that can be scientifically accounted for regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regulation which can be a solution to the problems and needs of the community regarding law in Legislation. In order to realize good regulations, a good academic paper is needed from community participation. With this in mind, this study will discuss the background of the need for an academic paper in the formation of legislation, in order to achieve legal ideals and for the realization of the principles of the formation of good legislation. The function of an academic paper is as a scientific paper that can be accounted for containing the background, the purpose of the preparation, the targets to be achieved so as to provide an overview of the agency, the scope of legislation, and provide a reflection for politics and law.

Keywords: Academic Paper; Formation; Legislation.

I. Introduction

Academic Paper is a paper that is scientifically the result of research or legal study on a particular problem that can be accounted for regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regulation as a solution to legal problems and needs in society. The importance of understanding academic paper in the implementation of drafting legislation because in the academic paper there is community participation that will be targeted in the legislation that is formed and formulated in detail using scientific methods. In addition, the academic paper that accompanies a draft legislation can be categorized as a source of inspiration for the draft legislation that will be fought for by the initiator to meet academic criteria, so that debates regarding the content material that will later be included in a draft legislation can be minimized as much as possible.

An academic paper must examine three substantive issues, namely: First, it must be able to answer the question of why new regulations are needed; Second, the scope of the material content and main components of the regulations; and Third, the process that will be used to draft and ratify the regulations. Therefore, every legal norm that will be included in the form of a draft law should truly have been drafted based on mature thought and in-depth reflection, solely for the public interest, not personal or group interests. The drafting of an academic paper is not without its inherent challenges, as is the case with legislative drafting. Sometimes, laws cannot solve all of society's problems. It can even happen that a law, once enacted and enacted, conflicts with previously enacted legislation, causing problems in its implementation.

Given that every law requires scientific research before being enacted, it is necessary to investigate why academic papers are not required for every law. Academic papers are crucial for inclusion in any draft legislation because they represent the paradigm of social life that will be reviewed by the scientifically formulated legislation. Furthermore, academic papers accompanying a draft legislation can also be considered a source of inspiration for the draft legislation being championed by the initiators. This minimizes debate regarding the material to be included in the draft legislation.

Academic papers are essential for legal drafters, particularly in formulating the content of the material to be regulated in a draft law. The need for academic papers is crucial considering that legal drafters, who are generally legal experts, are certainly not familiar with the intricacies of the material to be included in a draft law. Therefore, it is crucial that academic papers are needed.

II. Method

This type of research is normative legal research and is descriptive analysis, meaning that this research describes, examines and explains the answers to problems related to the background and role of academic texts in the formation of legislation. Then it is analyzed based on the theory of good legal regulations and the theory of utilitarianism carried out with a statute approach. Furthermore, the research data uses secondary data with data collection techniques carried out by interviews (field research) and literature (library research). Then all data are analyzed qualitatively using logical thinking and drawing conclusions deductively.

III. Main Heading of the Analysis or Results

Background of Academic Papers in the Formation of Legislation.

According to research, there are several reasons why academic papers are important in the formation of legislation, which are outlined below:

Realizing Legal Ideals : Legal ideals serve as the basis for establishing just regulations focused on the public interest. Therefore, academic planning is necessary to ensure that the regulations created are not only standardized but also address real-world problems faced by society. In accordance with the principle of a state based on the rule of law, law helps achieve national goals and improve public welfare.¹

Next, the objectives of law will be explained according to several theories on the formation of legislation: Objectives of Law According to Legislative Formation Theory: To achieve the goals of legal reform more effectively, the objectives of legal reform and development projects must be reinterpreted by considering the following five elements:

- a) That legislators create laws that are clear, accessible, understandable, and real.
- b) That members of society also encourage compliance with the laws that have been created.
- c) That the majority of people accept and view legislation as a principle of justice.
- d) That disputes (arising from or related to the implementation of legislation) are consistently brought to courts that are independent and impartial, which examine and decide cases based on these rules; that the decisions of such judges are actually complied with.²

The need for academic papers is primarily because the creation of regulations cannot be based solely on political will but must be based on clear philosophical, sociological, and legal studies. Through these studies, academic papers serve to bridge real problems in society with normative solutions in the form of regulations, thereby making legal

¹ Mahmud Siregar Deus Levolt Sihombing, Bismar Nasution, Faisal Akbar Nasution, "Peran Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan," *Locus: Jurnal Konsep Ilmu Hukum* Volume 3 N (2023), <https://doi.org/https://doi.org/10.56128/jkih.v3i1.38>.

² Sulistyowati Irianto, "Memperkenalkan Kajian Sosio-Legal Dan Implikasi Metodologis Nya," in *Kajian Sosio-Legal, Pertama* (Denpasar: Pustaka Larasan, 2012).

products less susceptible to challenge, more effective in their application, and minimizing judicial review.

Practically, academic papers serve as the primary source of information for the government and the House of Representatives (DPR/DPRD) to draft, discuss, and make decisions on a bill or regional regulation draft, as they include problem analysis, regulatory alternatives, and legal impacts. These documents also serve as a means for public participation and the epistemic community (academics, NGOs, practitioners) to provide input based on scientific data and arguments before legal norms are finalized into regulations. Academic papers help ensure the fulfillment of the principles of sound regulatory development, such as clarity of purpose, appropriateness between type and content, transparency, and effective implementation.

The function of an academic manuscript is to serve as a scientifically accountable benchmark for concepts containing background. The academic manuscript serves as a reference for drafters, allowing them to determine what will be regulated and translated into legal sentences using clear, firm, and open-to-multi-interpretation language. This will realize Indonesia's legal ideals as a constitutional state where its people live according to the law, thereby realizing an independent, united, sovereign, just, and prosperous Indonesia. The existence of an academic manuscript also demonstrates the application of the principle of conformity between the type and content of the content in the formation of legislation. The drafting of an academic manuscript must accurately consider the content to be regulated by the legislation. Legislation is, of course, created because it is truly needed and is expected to provide benefits in regulating life in society, the nation, and the state.³

Academic papers are crucial in the process of drafting or establishing legislation. They serve as a concrete medium for public participation in the process, and initiatives for drafting them can even come from the community. Therefore, academic papers outline the reasons, facts, and background of a problem or issue, making it crucial and urgent to regulate it in legislation.⁴

³ Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik: Gagasan Pembentukan Undang-Undang Berkelanjutan* (Depok: Raja Grafindo Persada, 2009).

⁴ Abdul Basyir, "Pentingnya Naskah Akademik dalam Pembentukan Peraturan Perundangundangan untuk Mewujudkan Hukum Aspiratif dan Responsif," *IUS II* (2014).

Academic papers provide an overview of the substance, material, and scope of a law and determine whether it is truly necessary for the public. They explain the concepts, approaches, and principles of the legal material to be regulated, as well as the rationale for its norms. Academic papers also provide considerations for decision-making by the executive and legislative branches regarding the issues being discussed.

IV. Conclusion

There are several reasons behind the need for academic papers in the formation of legislation, one of which is to achieve legal ideals, for the realization of the principles of good legislation formation. The function of academic papers is as a scientific paper that can be accounted for containing the background, the purpose of the preparation, the targets to be achieved, providing an overview of the substance, material and scope of a legislation to be made, and providing considerations in the framework of decision-making for the executive and legislative branches that form the legislation. Legislation should not be used as tools to achieve the goals of a group of people. Therefore, it is natural that every formation of legislation requires the inclusion of academic papers in its preparation. In addition, it is necessary to strengthen the position of academic papers in legislation so that it is not just a formality through a regulation that contains the procedures for preparing academic papers and also the requirements for the compilers of academic papers.

Acknowledgments

We extend our appreciation to all parties who have supported the development of this journal. We would like to express our gratitude to Ms. Adhitya Widya Kartika, S.H., M.H., for providing facilities and support during the research and writing process. We extend our special thanks to our supervisors and colleagues who provided constructive input to improve this work. We hope this journal will benefit the development of legal science, particularly in the field of legislative regulation formation.

References

Books:

Irianto, Sulistyowati. *“Memperkenalkan Kajian Sosio-Legal Dan Implikasi Metodologis Nya.”* In *Kajian Sosio-Legal*, Pertama. Denpasar: Pustaka Larasan, 2012.

Fungsi Naskah Akademik dalam Pembentukan Peraturan Perundang-Undangan sebagai Cerminan Politik dan Hukum

Aisyah Oktavia Dewi^{1*}, Tasya Amanda Mahdalena², Yuanita Ayu Virli³, Nayla Zhei Aurel Meilan Permana⁴, Ratna Christanti Sari Dewi⁵

Yuliandri. *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik: Gagasan Pembentukan Undang-Undang Berkelanjutan*. Depok: Raja Grafindo Persada, 2009.

Journal articles:

Basyir, Abdul. "Pentingnya Naskah Akademik dalam Pembentukan Peraturan Perundangundangan untuk Mewujudkan Hukum Aspiratif dan Responsif." *IUS II* (2014).

Deus Levolt Sihombing, Bismar Nasution, Faisal Akbar Nasution, Mahmul Siregar. "*Peran Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan*." *Locus: Jurnal Konsep Ilmu Hukum* Volume 3 N (2023).
<https://doi.org/https://doi.org/10.56128/jkih.v3i1.38>.