Regulatory impact assessment and its challenges: An empirical analysis from Indonesia

Teguh Kurniawan [a], [*], Muh Azis Muslim [a], Eko Sakapurnama [b]

[a] Department of Public Administration, Faculty of Administrative Science, University of Indonesia, Depok 16424, Indonesia
[b] Department of Business Administration, Faculty of Administrative Science, University of Indonesia, Depok 16424, Indonesia

ARTICLE INFO

ABSTRACT

Regulatory Impact Assessment (RIA) is a tool for improving the quality of new or modified government regulations. The absence of RIA can result in a regulation being unaccountable, non-transparent, or inconsistent. Moreover, the government will find it difficult to create policies that will benefit economic and social-welfare. In Indonesia's context, the use of RIA is just in the form of a pilot project and unsustainable both in the central and regional governments. Based on empirical research, this paper explored the existing conditions of RIA application by central and regional government in Indonesia. Moreover, this paper also analyzed the perception of the benefits and the challenges in utilizing it. The study found that RIA is still little and not optimally used in the preparation of various regulations in Indonesia both at the central and regional government levels although there are a number of benefits that would be obtained if it were used. This condition has arisen due to the lack of leader commitment, lack of apparatus knowledge of mindset and perception as well as limitations in budget, legal support, and socialization.

Introduction

Regulatory Impact Assessment (RIA) is a term used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation, with the aim of improving the quality of regulatory policy (Kirkpatrick & Parker, 2004). RIA aims to enhance public policy-making by systematically integrating the stock of available knowledge into these processes (Hertin, Jacob, Pesch, & Pacchi, 2009).

RIA has been used for some time (Rodrigo, 2005). At the beginning of 2001, 20 of 28 countries in the Organisation for Economic Co-operation and Development (OECD) were applying RIA. In contrast, only a few countries from lower-income developing countries were using RIA as a tool to design and formulate policies (Kirkpatrick & Parker, 2004). Indonesia is one of the lower-income developing countries that implement RIA. However, the implementation of RIA is still limited; the method is adjusted in practice and not applied systematically across policy areas.

RIA is an essential policy tool for regulatory quality (Organisation for Economic Co-operation and Development, 2008). Therefore, the limited use of RIA will not give policy-makers clear information about the potential impacts that may result from a policy. Moreover, the regulation being formulated could be unaccountable, non-transparent, and inconsistent. Furthermore, the government will find it difficult to pursue economic and social prosperity. This condition occurs because RIA has been purported to assist governments in formulating their policies more efficiently; therefore, it can contribute to the policy-making process by promoting efficient regulatory

policy and improved social welfare (Organisation for Economic Co-operation and Development, 2008).

Related to this limited use of RIA, in the Indonesian context, is the fear of the many things happening, including in the policies made by the regional government. A number of institutions such as The Asia Foundation (TAF) noted that the regulatory formulation process by the regional government in Indonesia is characterized by the lack of analysis, the absence of an effective review mechanism, and also limited public hearing participation. These conditions have caused the emergence of many problematic regional regulations which in particular, have burdened business (The Asia Foundation, 2011). Such problems persist despite the various initiatives in the use of RIA in Indonesia that commenced in 2001. However, at the end of 2009, the Ministry of National Development Planning/National Development Planning Board (BAPPENAS) launched Regulatory Impact Analysis Guidelines in order to minimize the emergence of various policies that were counterproductive to the improvement of the business climate (Badan Perencanaan Pembangunan Nasional, 2011).

RIA is one of the tools or approaches that can be used to improve the quality of government policies. Since 2003, along with several ministries/institutions, BAPPENAS has been an active agent in developing and disseminating the RIA method. One of the most important measures undertaken was to develop and launch a guidebook on RIA implementation in 2009 with the support of several donors through TAF (Badan Perencanaan Pembangunan Nasional, 2011). By using this RIA guidebook, various parties (in particular: government agencies at the central and regional levels) can learn more about the RIA method. However, the implementation of RIA, until now, has still not been applied by central and regional governments. The use of RIA is just in the form of a pilot project and is unsustainable.

Taking account of this situation, this paper tries to answer a number of questions. Firstly, what are the conditions of use of RIA in the making of regulations by central and regional government agencies in Indonesia? Secondly, how can an RIA provide benefits when it is used, as well as what are the problems or obstacles encountered in the use of RIA?

Research Methodology

The study used qualitative methods that consisted of a desk study of the literature and other relevant data that related to the implementation of RIA, and also in-depth interviews with key informants from the central and regional governments. Data collection also included focused group discussion with the parties consisting of: Secretary of the Region, Head of Legal Bureau of the Region, the heads of several departments in the regions, and members of the Regional House of Representatives (DPRD).

The loci of the study were selected purposively to include central and regional government agencies that have implemented RIA and that are not utilizing RIA. Seven regional governments were used as study sites, namely: the Regency of Bantul, Municipality of Pekalongan, Regency of Solok, and Regency of Gorontalo to represent regions that have made use of RIA and the Regency of Bandung, Regency

of Brebes, and Regency of Pekalongan to represent regions have not taken advantage of RIA. The central agencies in this study were: the Ministry of Commerce, Ministry of Finance, Ministry of Justice and Human Rights, BAPPENAS, Ministry of the Internal Affairs, and General Secretariat of the House of Representatives (DPR). A number of agencies are considered as a state agency significantly associated with the use of RIA in Indonesia; for instance, non-government organizations, namely TAF, an institution that initiated the use of RIA in Indonesia. It was also included as a sample for the study.

Research Findings

General Findings on the Utilization of RIA in Preparing Various Regulations in Indonesia

RIA is still little and not optimally used in the preparation of various regulatory/policy processes in Indonesia. From the six central agencies of the study, only one agency (Ministry of Commerce) is still using the RIA method, while one other agency (BAPPENAS) had been implementing RIA since 2006 but ceased in 2011. Two others institutions (Ministry of Internal Affairs and General Secretariat of DPR) have taken advantage of RIA, but not fully exploited it. Two other institutions (Ministry of Justice and Human Rights and Ministry of Finance) are not using RIA.

In the three regions that have not taken advantage of RIA, two regions (Regency of Bandung and Regency of Pekalongan) have officials with knowledge of RIA, while one other sample (Regency of Brebes) did not have personnel who knew about RIA. As in the four regions that are already implementing RIA, only one region, namely the Regency of Gorontalo is still using RIA when this study was conducted, while the other three regions (Regency of Solok, Regency of Bantul, and Municipality of Pekalongan) are no longer using RIA. These three regions only used RIA upon getting facilitation from TAF and its use did not survive long after the assistance ended.

Based on these findings, there are officers who are knowledgeable about RIA in the various agencies, though these agencies have not used the RIA method in the preparation of their various regulations or policies. Thus, the use of RIA in Indonesia has the potential to be optimized. The civil servants who already have an understanding of RIA can be a driving force for the optimization of the use of RIA within the scope of their respective institutions. However, this action requires support by commitment from the head of the institution, or formal policy support that can be an umbrella in the implementation of RIA.

Related to this, many resources person in this study considered that one of the causes of the non-implementation of RIA was as a result of no support of the rules that explicitly require the use of RIA. In fact, a number of existing rules, such as Law No. 12, year 2011, have a number of elements that are associated with RIA. Therefore, the opportunity to formulate the implementing rules which can be an umbrella for RIA implementation is possible. However, by looking at a number of existing conditions expressed by various resources people, RIA in many cases is extremely difficult to implement entirely in