

RESEARCH PAPER

Regulatory Impact Analysis (RIA) as a Mandatory Legislative Drafting Method for Achieving Sustainable Development Goals (SDGs) in Indonesia

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ABSTRACT

PURPOSE: This study's objectives are the analysis of the urgency of RIA, the problems in achieving the SDGs and their solutions.

APPROACH: This study uses the normative legal analysis method with secondary data.

FINDINGS: The results showed that there is an urgency for Indonesia to implement RIA in preparing its laws and regulations to achieve the SDGs. Practically, the RIA method is not a must-use method in preparing Indonesia's law and is not a priority. Several institutions encourage people to use RIA and this must be encouraged so that RIA can be inherently implemented before making decisions to make laws and regulations.

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RESEARCH IMPLICATIONS: The RIA method is considered a breakthrough that can be used as a guide for making good laws and regulations. In the future, the House of Representatives (DPR), as RIA guideline drafters, may include the SDGs as one of the parameters in forming regulations.

KEYWORDS: *Regulatory Impact Analysis (RIA); Legislative Drafting; Indonesia*

INTRODUCTION

Jacobs and Astrakhan (2006) pointed to three main reasons for poor legislation:

- 1) costs that cannot be accounted for in an accountable manner, in the process of legislative drafting;
- 2) lack of coordination between the government itself, causing overlapping or even non-implementation of various affairs; and
- 3) the political economy of politicians, where they issue policies that efficiently provide payments for parties who are deemed to be able to facilitate their steps.

It is confirmed by research from the National Development Planning Agency (Bappenas), that Indonesia's poor quality of legislation is due to the lack of impact assessment in the law drafting process (Nalle and Kristina, 2020). In Nalle and Kristina (2020), Verschuuren and Van Gestel mention the importance of impact analysis. They state that an impact analysis should ideally be carried out at an early stage of legislation because the relevant policy options are still open for transparent discussion (Nalle and Kristina, 2020). The regulatory impact analysis is carried out to see all aspects of implementing regulation.

One of the regulatory impacts developed by many countries is the Regulatory Impact Analysis (RIA), developed by the Organisation for Economic Co-operation and Development (OECD). It started to implement the idea and published their guidelines for implementing RIA in March 1995. In simple terms, RIA is defined as analysing the impact of laws. In more detail, RIA is defined as a comparative process based on established regulatory objectives and identifying all possible policies that influence the achievement of policy objectives.

Indonesia has not strictly enforced RIA as a basic guideline in legislative drafting until now. In comparison, several OECD member countries, such as the Czech Republic, Korea, and Mexico, implemented RIA in their laws. In the United States, RIA is required by Presidential Decree. In Australia, Austria, France, Italy, and the Netherlands, RIA is required by the Prime Minister's decision. In Canada, Denmark, Finland, Japan, Hungary, New Zealand, Norway, Poland, Germany, Portugal, Sweden, and the UK, the use of RIA is based on cabinet directives, cabinet decisions, and government policy directions (Suska, 2012). In addition, several developing countries in various parts of the world also apply the RIA method for multiple policies as shown in Table 1.

Table 1: Number of Developing Countries Applying RIA Method to Various Policies

Area	Economic Policy	Social Policy	Environmental Policy
Asia	8	8	5
Africa	10	5	7
Latin America	5	3	5
Other NSB	5	5	4

Source: Kirkpatrick *et al.*, 2004

Based on the table above, it can be seen that the use of RIA is widespread in many countries in various parts of the world. Therefore, it becomes relevant to discuss the urgency of using RIA in preparing laws in Indonesia, especially considering the poor state of legislation. In addition, improvements in the preparation of laws will also affect achieving one of the Sustainable Development Goals (SDGs), namely the achievement of peace, justice, and strong institutions.

There are 17 SDGs that are now the world community's focus. Indonesia is one of the countries that have ratified the SDGs. Although the SDGs are not legally binding for Indonesia, the state is expected to take ownership and build a national framework to achieve these 17 goals. As a tangible form of Indonesia's commitment to realising the 17 SDGs, the government issued Presidential Regulation Number 59 of 2017 concerning achieving Sustainable Development Goals (Presidential Regulation 59/2017).

The existence of Presidential Regulation 59/2017 shows Indonesia's further commitment to achieve the SDGs in the world. Regarding the achievement of the SDGs, RIA answered SDG 16, namely peace, justice, and strong institutions. RIA is an assessment process that involves stakeholders and promotes transparency and can contribute to achieving policy coherence. It introduces formal procedures for those affected by the proposed regulations to exercise their right to be notified and provide feedback. RIA contributes to public accountability and oversight of executive action. It is particularly relevant for developing countries seeking policy coherence by involving multiple stakeholders. Stakeholders as diverse as citizens, domestic companies, foreign companies, investors, and international donors alike demand a real commitment from governments to listen to their interests before issuing regulations. It drives the importance of implementing RIA in formulating laws in Indonesia to achieve the SDGs.

Based on the explanation above, this research will answer questions related to the urgency of implementing RIA to achieve the SDGs. It will show the challenges of implementing RIA in legal construction associated with the preparation of existing laws and the solutions to encourage more massive implementation of RIA to achieve the SDGs. This paper is expected to support the existing arguments about the importance of implementing RIA in forming regulations. The novelty of this paper is to describe the relationship between RIA and the achievement of one of the SDGs as one of the parameters in the formation of legislation.

RESEARCH METHODOLOGY

This study focuses on how the RIA will positively impact the achievement of the SDGs when used as a reference in the legislative drafting process in Indonesia. The method used in this research is the normative legal method; this is an analytical method that uses literature studies as its primary source (Soekanto, 2014). This study uses secondary data by analysing the results of previous studies related to the SDGs and RIA, related to both their application in Indonesia and other countries. Some of the approaches used are the conceptual, statutory, and comparative approaches. In addition to secondary data, the author's involvement in several focus group discussions (FGDs) and workshops organised by several government agencies, such as the Expertise Board of the House of Representatives of the Republic of Indonesia and the Cabinet Secretariat, enriched the material for this research.

THE URGENCY OF USING RIA IN ACHIEVING SDGS

RIA is a process of several steps that aims to analytically and systemically answer whether regulatory intervention is needed. This process also analyses which possible options are the best solution (Radulović and Marušić, 2011). Based on this definition, RIA should be used as early as possible in the legislative process because it is designed to help inform decision-makers whether or not an arrangement needs to be made. The best way to put RIA into practice is to use it as the basis for establishing an evidence-based policy. In practice, RIA is often positioned as a tool to support a draft regulation (Trnka, 2015). The point that needs to be emphasised here is that the legislative drafting process must be based on solid evidence that regulatory/policy intervention is required under certain conditions, not the other way around; the evidence is collected to support the legislative drafting. Indeed, legislative drafting always has a goal to achieve. However, we also have to remember that issuing laws is not the only solution to achieve the purpose (stated in the drafted law). Similarly, in their achievement, SDGs, which are widely known internationally, do not always rely on legislative drafting.

The SDGs promise not to leave anyone behind, place sustainable development in all fields for the benefit of all parties. Efforts to realise the SDGs in Indonesia require strategic steps to consider which goals can be achieved first, followed by other objectives. In doing that, we can utilise the RIA method to determine priorities for achieving SDGs. Furthermore, the RIA method analyses the impact of policies with the primary considerations, namely consultation with various stakeholders and cost-benefit analysis (Jamal, 2020).

It should be noted that the OECD, known as the organisation that popularised RIA internationally, is also running projects to support the achievement of the SDGs. The OECD framework consists of improving policy coherence, promoting investment in sustainable development, supporting inclusive growth and well-being, ensuring the planet's sustainability, promoting partnerships, strengthening data availability and capacity, and facilitating follow-up and review (OECD, 2021). Regional policy assessment programmes support inclusive growth and well-being (OECD, 2021). The programme can be linked to a project highlighted by the OECD, namely RIA, as an impact

analysis method used to assess whether a policy can still be implemented (do nothing), should be revised, or replaced with another new approach.

The RIA method is norm analysis and can also take non-legislative actions that might be the best solution for specific social and economic problems (Pandi, 2021). One of the parts in RIA that becomes the most critical aspect is Cost Benefit Analysis (CBA); this is a method to analyse the costs and benefits of something related to laws. In addition, RIA also recognises several types of frameworks for analysing policy impacts, including Break Even Analysis, Cost-Effectiveness Analysis (CEA), and Multi-Criteria Analysis (MCA) (OECD, 2008).

As explained above, after weighing the costs and benefits arising from each available option, policy-makers can choose three options, namely, do nothing, revise existing regulations/policies, or form new laws. Based on these three options, RIA can help provide valid arguments in favour of planned regulation, particularly helping to avoid excessive legislative drafting and reduce bureaucratic burdens (Pandi, 2021).

In 2009, Indonesia started to use RIA as a method of policy-making through the launch of a guidebook for the implementation of the RIA method by Bappenas (Suska, 2012). Two years later, Law No. 12 of 2011 concerning the Establishment of Legislation was promulgated: the law does not explicitly discuss using the RIA method as an analysis method. Still, it only places RIA as one of the options for the policy analysis method in preparing Academic Papers (Law Drafting Centre Expertise Board of the House of Representatives of the Republic of Indonesia, 2017). However, forming legislation in Law No. 12 of 2011 has adopted some RIA concepts (Trnka, 2015). Differences from the RIA concept launched by the OECD include identifying policy options, quantifying policy options, policy options compliance strategies, and policy evaluation mechanisms (Trnka, 2015).

The development of the use of RIA in Indonesia shows a good trend with the adoption of RIA into policy impact analysis preparations taken by the government. In 2017, Presidential Instruction Number 7 of 2017 was issued regarding Policy Implementation, Monitoring, and Controlling at the Level of State Ministries and Government Agencies. This instructs stakeholders at the State Ministries and Government Institutions to conduct impact analysis and public consultation before establishing a policy. One form of follow-up to this mandate is the issuance of the Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 96/KEPMEN-KP/202. This concerns the Technical Guidelines for preparing a Written Study of Draft Laws within the Ministry of Maritime Affairs and Fisheries using the Regulatory Impact Analysis Method.

In addition, currently, the Expertise Board of the House of Representatives of the Republic of Indonesia (BK DPR RI) is preparing RIA guidelines in the preparation of Academic Papers (NA) and Draft of Laws (RUU). In the proposed RIA guidelines established by the BK DPR RI and indicators for conducting a cost-benefit analysis, Pancasila and Human Rights (HAM) indicators are also used to analyse the impact of policies. The efforts made by the BK DPR RI to include Pancasila and Human Rights as indicators of RIA analysis to ensure every approach. It must not conflict with Pancasila, and Human Rights is a good step that, on the one hand, deserves appreciation but can

also be improved. The placement of the SDGs as an additional indicator, for example, is believed to strengthen the use of RIA to achieve the SDGs.

THE CHALLENGES OF USING THE RIA METHOD TO ACHIEVE THE SDGs AND THEIR SOLUTIONS IN INDONESIA

In 2021, Indonesia ranked 97th out of 165 countries to fulfill the SDGs. Indonesia's ranking, which can only record a score of 66.3, is still lagging compared to other ASEAN countries, such as Thailand, Vietnam, and Malaysia (Sach *et al.*, 2021). The lack of maximum fulfillment of the SDGs is caused by several factors, including regulations and policies. The existence of gaps in the conception of the long-term goals of the SDGs and short-term-oriented policies contributed to the slow pace of fulfillment of the SDGs (van Vuuren *et al.*, 2015). Various scenarios with different levels of difficulty in each period of government also influence policy so that the proposed solutions are only marginal. In contrast, the fulfillment of the SDGs requires transformative solutions and changes (van Vuuren *et al.*, 2015).

One of the ways to improve the quality of policies and regulations is to use RIA as a method in formulating a policy. Assessment in RIA acts as a tool that can help policy-makers to sort out the consequences of various policy options that will be made. In addition, RIA is also a means to increase accountability and transparency in policy-making (OECD, 2020).

Although RIA has experienced a positive trend since it was first introduced to the Indonesian people in 2009, it still faces many challenges. Research conducted by Kurniawan *et al.* (2018) classifies these challenges into three categories: strategic, substantive, and technical. Strategic challenges include the lack of commitment of regional leaders in implementing RIA as a guideline in formulating policies. RIA is not mandated by Law No. 12 of 2011 as a required method in the policy analysis. The mindset of government officials is that RIA is a complex and expensive method. Substantive challenges include the lack of insight by government officials regarding RIA that is seen as the only suitable method of policy analysis in the economics field because of the cost-benefit analysis component. Meanwhile, technical challenges include the lack of socialisation of RIA by government agencies at both the central and regional levels, and budgetary restrictions on the use of RIA due to the perception that the RIA method will require a large amount of money (Kurniawan *et al.*, 2018).

Research conducted by Nalle and Kristina (2020) also reveals that the RIA method in Indonesia is still far from ideal. Of the several academic papers published between 2016-2019, only the Academic Paper of Encryption Bill has used the RIA method in its preparation; other academic papers still focus on analysing statutory regulations. In addition, in several academic papers, the research results on empirical conditions in the field were not found (Nalle and Kristina, 2020).

The many challenges in implementing RIA in Indonesia indirectly correlate to the fulfillment of the SDGs. RIA implementation that is not effective and efficient will result in a less than optimal analysis of the risks of each policy option taken. Consequently, there will be inconsistencies in the

quality and direction of the resulting policies. This stagnant spirit of change is a stumbling block for Indonesia to fulfill the SDGs, and requires measurable transformative changes.

The OECD analysis shows that the use of RIA in an appropriate and systematic framework can support government efforts to ensure that regulation is efficient and effective in a complex and ever-changing world (OECD, 2021). However, it should be understood that making policies that are on target and support the community's welfare is not easy (OECD, 2021). Therefore, the integration of SDGs and RIA is needed, not only aiming for policies to be on target, but must also have the capability to accommodate the ever-changing and complex world conditions.

Some solutions are believed to overcome the problems and challenges faced by Indonesia in using the RIA method to achieve the SDGs:

1. To encourage the use of the RIA method as early as possible, not only during the preparation of laws but also before the determination of plans for the preparation of laws. Making laws is commonly seen as the only medium for solving problems that occur in society. Whereas based on the RIA method, there are many alternative forms of government intervention to a problem that occurs in the community, for example (OECD, 2019):
 - a. Conduct socialisation to inform or prevent the public on a problem;
 - b. Imposing a tax to control an activity;
 - c. Providing subsidies to stimulate certain behaviours; and
 - d. Initiating the development of “self-regulation” within the scope of a particular industry or group.

The paradigm needs to change to what should be counted as the number of problems that can be solved, not how many laws have been promulgated. The government should be more open to non-legislative options identified through the RIA method.

2. To integrate SDGs achievements as one of the indicators in RIA. In addition, in addition to conducting the policy analysis based on calculating costs and benefits, Indonesia has also started working on policy assessments with multiple indicators through a competition checklist that functions to ensure that policies will not result in unfair business competition (KPPU, 2016). Therefore, it is certainly not challenging to add sustainability impact indicators in a policy impact assessment to achieve Indonesia's SDGs immediately. The background that underlies the idea that SDGs need to be included as an indicator of RIA analysis is the Ratification of Presidential Regulation 59/2017; this is the gateway to the adoption of SDGs in Indonesia. Therefore, as a regulator in Indonesia, the government cannot turn a blind eye to the agendas in the SDGs. Every regulation that is formed should encourage the achievement of the SDGs.

The integration of goals in the SDGs as an indicator of RIA analysis is not the first time in the world. Recognising the importance of aligning policy with sustainable development, the UK pioneered the integration of sustainable development criteria into RIA in the 1990s

(Jacob, 2010). This was followed by the European Commission in 2003, Switzerland in 2004, Ireland in 2005, and Belgium in 2007 (Policy Department (Dirth and Zondervan), 2019).

CONCLUSIONS

The efforts to realise the SDGs in Indonesia require strategic steps from the government. The urgency of using the RIA method to achieve the SDGs is because RIA analyses the impact of policies with the primary considerations, namely consultation with various stakeholders and cost-benefit analysis. RIA is believed to improve the quality of produced laws; this is one indicator of the achievement of the SDGs, namely the attainment of peace, justice, and strong institutions.

Although the use of RIA in Indonesia shows a positive trend, its implementation still faces many challenges. These include the lack of commitment by policy-makers to use RIA, the view that RIA is a complex and expensive method, lack of insight by government officials about RIA, lack of socialisation of RIA, and a limited budget for the use of RIA. The less than optimal use of RIA impacts the quality of policies that affect the level of achievement of the SDGs. To overcome this problem, the Indonesian government must carry out RIA before determining plans for legislative drafting and integrating the achievement of the SDGs as one of the indicators in RIA.

This research can be used as a starting point for several further studies related to the relationship between the formation of regulations using the RIA method and the achievement of the SDGs. Research on what legal remedies can be used to encourage the implementation of RIA, and what standards or measures should be used in the RIA method that suits Indonesia's needs, are also ideal examples for further research. In the long run, research can also be carried out on the effectiveness of applying the RIA method to achieve the SDGs after several years of RIA being successfully implemented in Indonesia.

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