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

* Corresponding author.
  E-mail address: teguh.kurniawan@ui.ac.id (T. Kurniawan).
Peer review under responsibility of Kasetsart University.

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

Indonesia. There needs to be a variety of adjustments to the RIA according to the context and conditions in Indonesia. There was a view that as a method, RIA had been developed by countries that have characteristics in many ways different from Indonesia.

Another key point of the findings that should be considered for the successful implementation of RIA in Indonesia is related to the leadership role in determining the success of implementation, which is shown clearly by the case of the Ministry of Commerce and Regency of Gorontalo. The conditions in these two institutions illustrate the impact of a dominant leadership role. Resistance arising from the apparatus can be overcome by a strong willingness of leaders who give full support in the implementation of the program and have the confidence and ability to garner support from various parties. Therefore, for the future of any RIA development effort, it is also very important to convince the leadership figures of the central and regional governments of the benefits and important contribution of RIA. This will require a lot of effort in socialization and providing an understanding of the important role of RIA.

Perceived Benefits of Using RIA

RIA is a scientific approach that can be used by policy makers to assess the possible impact of a proposed rule, and the actual impact of existing regulations. The results of the current study show that some institutions that are consistently implementing RIA have obtained some benefits as follows:

Firstly, as a tool or method in making policies, instruments that apply RIA have policies with detail that are systematically arranged. It generally produces policies that are made accountable, transparent, consistent, and can assist in the achievement of economic and social welfare. In practice, it can be seen that the regulations generally have a lot of impact though it is often difficult to predict without detailed study and consultation with the parties affected.

Secondly, the RIA method for policy makers can help in producing efficient and effective policies. Aspects of efficiency can be seen in the benefit to be derived from the policy, as the main objective of RIA is to ensure that the regulations will improve the welfare of society from the standpoint of profits will not exceed costs. The aspect of effectiveness based on the involvement of all stakeholders from the beginning until the problem formulation stage of the preparation of the options available, can result in minimizing any resistance that may occur from the beginning.

Thirdly, instruments that apply RIA can systematically assess the positive and negative effects of the regulation that is being proposed or is under way with regard to the analysis of costs and benefits over existing options. In other words, through using this method, it can be known in advance, whether the intervention from policy makers is appropriate and needed or just the opposite. This is important because it is essential that a policy provides greater benefit.

Moreover, the involvement of stakeholders in the process will get enable the relevance of the problems faced and the needs of the community to more closely identified and aligned with the policy objectives that will be generated, producing a comprehensive and accountable policy.

Furthermore, the use of RIA can improve the quality of the resulting policies. This is based on the availability of information on the potential impact of policies to provide an assessment of the application or absence of a policy in achieving the desired goal.

Issues and Constraints in the Utilization of RIA

Based on the analysis, there are many problems and constraints in the use of RIA in the various national and regional agencies. There are three classifications of obstacles, namely: strategic, substantive, and technical.

The strategic constraints are the lack of commitment of regional leaders in implementing RIA as a guide for developing a policy. Of the four regional governments that have implemented RIA, there is only one region that was still using RIA when this study was conducted, namely the Regency of Gorontalo, while three other regional governments only implemented RIA while they were getting technical assistance from BAPPENAS and TAF. This reflects the lack of commitment of regional leaders to use RIA as a tool to evaluate proposed or existing policy/regulation. The same thing happened with the central agencies. The BAPPENAS, who became a pioneer in the implementation of RIA, currently do not use RIA anymore.

Beside the lack of commitment of regional leaders, it is also apparent that RIA is not mandated by Law No. 12, year 2011 on the Establishment of Regulations. It has been argued that this is the reason that RIA does not need to be used as a tool in formulating regulations/policies. The study documenting its need to complete policy proposals is only an academic paper. Various government agencies at both the central and regional levels in preparing the standard operating procedure (SOP) on the preparation of the central and regional regulations only require an academic paper as a document to complete the policy proposal.

There is also a mindset in authorities that RIA is a method that is complex and costly. This mindset that emerged from the results of the study shows that the application of RIA as a method of evaluation of policies will slow the working process in formulating a regulation. This makes the authorities resist applying RIA.

The substantive constraints are related to the weak capacity of authorities regarding their knowledge of RIA. Most of the respondents did not know of RIA as a tool to evaluate policy, although technical assistance has been forthcoming from BAPPENAS and TAF; nonetheless, these officials admitted that their knowledge of the use of RIA was still very low. Lack of knowledge of civil servants serving in the Legal Bureau or related units was a barrier to the consistent implementation of RIA in governmental agencies. The very limited insight of the officials on RIA has complicated the implementation of RIA by regional government or the central government agency. The absence of "RIA expertise" in each ministry/agency and regional government makes it difficult for leaders to develop RIA as a tool to evaluate policy.

The substantive constraints were also related to the perception according to the empirical data that RIA is only

suitable for policies that govern the economic sector. This view arose in particular because RIA focuses on cost-benefit analysis and that is considered only suitable for regulations governing investment, business licensing, and trade, whereas for other policies governing political, social, cultural and civic areas, it is difficult to apply. This perception has resulted in authorities considering that RIA is not a generalist tool that can be applied to assess government policy.

The technical constraints are related to minimal socialization on RIA by the government institutions both at the central and regional levels. The rare transfer of information about RIA knowledge is making RIA less well known in most agencies. Moreover, the other method of analysis of regulations such as Rocippi or Makara has resulted in RIA not being a priority to serve as a guide in formulating policy.

Another technical constraint is the budgeting aspect of regional governments that is limiting utilizing RIA as a tool to formulate and evaluate policies. There is a perception by the regional government officials that to apply the RIA method will require considerable cost. The length of the process and the time required for each stage of the RIA activity have become separate disincentives for authorities not to use RIA.

The findings of this study relating to the use of RIA in Indonesia as well as the obstacles and the problems it faces reinforce the findings of Caroll (2010), based on an examination of the extent RIA can lead to better policy making in Australia. According to Carroll, the use of RIA is determined by the structure of the political administration applying RIA. This is related to how RIA was introduced and applied. According to Carroll, the gap between understanding and enthusiasm in RIA application will be determined from the awareness and understanding to implement RIA derived from the organization itself. To that end, in order that the application of RIA can be successful, there needs to be a deep understanding of the importance of RIA in the policy-making process.

In his study, Caroll (2010) also noted a number of obstacles encountered in the use of RIA in Australia, namely: the failure to acknowledge the lack of data in RIA; the lack of data on specific target groups or sectors; the lack of technical expertise, especially with regard to cost-benefit analysis; disregard for the source and non-economic types of knowledge; the lack of evidence and learning from experience; and a lack of commitment from the top leadership. Various problems were found in the current study in some respects are in accordance with what was proposed by Carroll. This study emphasized that in order to be able to optimally utilize RIA will require a commitment from the leadership, capacity building of authorities, and the use of other than economic knowledge that is in accordance with local conditions and contexts.

Conclusion and Recommendations

RIA is a policy tool that can be used to improve quality in formulating regulations. Nevertheless, the use of RIA in Indonesia is still not optimal, although there are a number of benefits that would be obtained if it were used. There are various obstacles which are associated with a number of issues such as commitment, perception and quality of authorities, socialization, and the allocated budget. To overcome these obstacles, this study suggests a number of actions: (1) including RIA as a part of the education and training curriculum of leadership; (2) making RIA an alternative method in the formulation of policies; (3) implementing socialization and continuous workshops on RIA in various government institutions both at the central and regional levels; (4) adopting the mindset of RIA, which is also called concise RIA and/or logic thinking RIA in formulating policies; and (5) restructuring the budget allocation in the preparation of the regional government policy so that RIA can be implemented in Indonesia.

Conflict of Interest

There is no conflict of interest.

References

Badan Perencanaan Pembangunan Nasional. (2011). *Pengembangan dan Implementasi metode regulatory impact assessment (RIA) untuk Menilai Kebijakan (Peraturan dan non peraturan) di Kementerian PPN/BAPPENAS (Kajian Ringkas).* Retrieved from http://birohukum.bappenas.go.id/data/data_kajian/Draft%20Policy%20Paper%2013juli.pdf.

Caroll, P. (2010). Does regulatory impact assessment lead to better policy? *Policy and Society, 29*(2), 113–122.

Hertin, J., Jacob, K., Pesch, U., & Pacchi, D. (2009). *The production and use of knowledge in regulatory impact assessment: An empirical analysis* (FFU Report 01–2009). Retrieved from http://www.polsoz.fuberlin.de/polwiss/forschung/systeme/ffu/publikationen/2009/hertin_julia_jacob_klaus_pesch_udo_pacchi_carolina_2009/FFU_rep_01_2009.pdf.

Kirkpatrick, C., & Parker, D. (2004). Regulatory impact assessment and regulatory governance in developing countries. *Public Administration & Development, 24*(4), 333–344.

Organisation for Economic Co-operation and Development. (2008). *Building an institutional framework for regulatory impact analysis (RIA): Guidance for policy makers.* Paris Cedex, France. Retrieved from http://www.oecd.org/regreform/regulatory-policy/40984990.pdf.

Rodrigo, D. (2005, June). *Regulatory impact analysis in OECD countries: Challenges for developing countries.* South Asian-third high level investment roundtable. Roundtable conducted at organisation for economic Co-operation and development, Dhaka, Bangladesh. Retrieved from http://www.oecd.org/gov/regulatory-policy/35258511.pdf.

The Asia Foundation. (2011). *Innovations in strengthening local economic governance in Asia.* San Fransisco, CA. Retrieved from http://asiafoundation.org/resources/pdfs/InnovationsinStrengtheningLocalGovernanceinAsia.pdf.