Legal Certainty in the Implementation of Economic Analysis of Law for Policy Making Process

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Abstract
Economic Analysis of Law (EAL) is a method that uses concepts and theories from economics to evaluate the process, formation, structure, and the impact of law on society. The method is implemented through the use of Regulatory Impact Analysis (RIA) as outlined in Law No. 13 of 2022 concerning the Second Amendment Law No. 12 of 2011 concerning the Formation of Legislation (Law No. 13 of 2022). The Law, however, is not supported by implementing regulations explaining how RIA is carried out. This article uses a normative legal research method. The analysis is carried out through both statutory and historical approaches. The results of this research show that the implementation of EAL following the enactment of Law No. 13 of 2022 needs to be supported with various policies, such as issuance of implementing regulations explaning the procedures of conducting RIA in the regulatory making process. These efforts should also be supported by adequate infrastructure facilitated by Ministries and/or Institutions in conducting impact analysis and augmenting skills of policy makers to enchance the development of laws and regulations.

1. Introduction

As an approach to policy making, economic analysis of law (EAL) is a method that uses concepts and theories from economics to evaluate the process, formation, structure, and impact of law on society[1]. For the government, the mechanism for making laws and regulations includes implementation of a policy impact analysis (Regulatory Impact Analysis or RIA) and Cost Benefit Analysis (CBA). This method

[1]Team of the Center for Legal and Economic Policy Analysis, 2022, Economic Analysis of Law in the Indonesian Legal System, Jakarta: Diadit Media, p. 228; Maria GS Soetopo, "Kapita Selekta", Presentation at the College of Police Science, Pelita Harapan University – Institute for Economic Analysis of Law and Policy, Jakarta, April 2021, p. 15.

has been applied in at least 95 countries[2], including Indonesia, notably after the amendment of Law No. 12 of 2011 concerning the Formation of Legislation (Law No. 12 of 2011) with Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation (Law No. 13 of 2022). However, from various efforts that have been made in following up the mandate of the law, Law No. 13 of 2022 leaves problems of legal uncertainty due to the absence of specific technical guidelines explaining RIA and its implementating procedures. The issuance of the new law confirms the obligation to implement RIA and CBA which were originally regulated implicitly in several provisions of Law No. 12 of 2011 *jo.* Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislation (Law No. 15 of 2019). The following are several attributes that are stipulated concerning the RIA and CBA implementation.

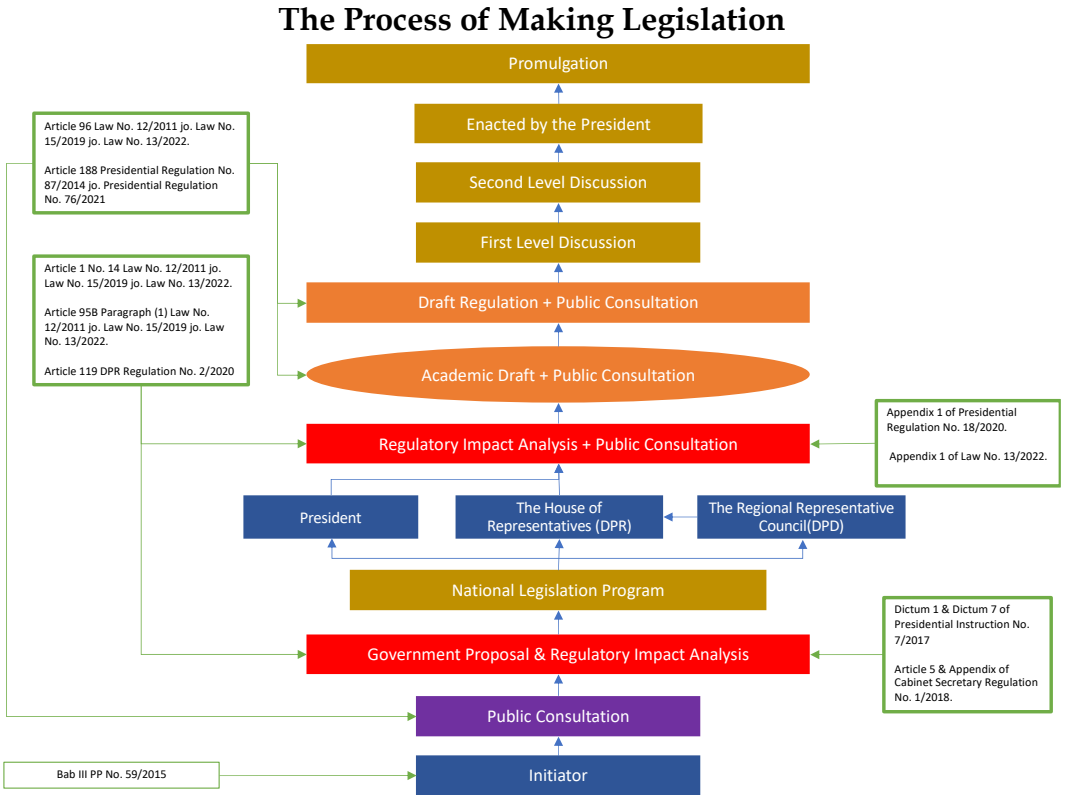
First factor refers to Article 1 number 14, which defines monitoring and review as activities to observe, record, and assess the implementation of applicable laws. It aims to determine the achievement of the planned targets, the impacts, and the benefits for the country. Secondly, Article 5 letter d and letter e states that the formation of laws and regulations must be based on several principles, such as:

1) The principle can be implemented which obliges every statutory regulation to take into account its effectiveness in society philosophically, sociologically and juridically; and
2) The principle of usability and efficiency places the needs and benefits in regulating the life of society, nation and state as the basis for the formation of laws and regulations.

Thirdly, Article 6 Paragraph (1) letter g, letter h, and letter j requires the contents of laws and regulations to reflect several principles, namely justice; equality in law and government; and balance, harmony and conformity. Fourthly, Article 95A stipulates that the monitoring and review of laws is carried out by the People's Representative Council, the Regional Representatives Council, and the Government after the law is enacted. The results of the implementation of the process can be used as suggestions in the preparation of the National Legislation Program. Lastly, Article 95B Paragraph (1) states that monitoring and review of laws is carried out in three stages which include the planning stage, the implementation stage, and the follow-up stage. The various changes caused the process of drafting laws and regulations to be transformed into the following:

Figure 1.

[2]Maria GS Soetopo, "Legal Research Methods", Presentation of the Doctor of Law Program at the Faculty of Law, Pelita Harapan University – Institute for Economic Analysis of Law and Policy, Jakarta, 2023, p.18.



Source: Center for Economic Analysis of Law and Policy, processed.

Figure 1 reflects that the revision of Law No. 12 of 2011 requires a policy impact analysis to be carried out by legislators as part of the monitoring and review process. Concretely, the implementation of the policy impact analysis is carried out at the preparation stage of the National Legislation Program and prior to the preparation of academic papers. This obligation is further emphasized in Law No. 13 of 2022 through General Explanation and Appendix I. Through this, RIA is stated explicitly as one of the methods that can be used to support the study of academic papers. The inclusion of RIA thus makes the current implementation of EAL a formal requirement that must be fulfilled in making new laws and regulations. This is understandable, considering that the use of EAL is essentially related to the principles in the provisions of Article 5 letter d and letter e as well as Article 6 Paragraph (1) letter g, letter h, and letter j of Law No. 12 of 2011 *jo.* Law No. 15 of 2019 *jo.* Law No. 13 of 2022 (Law on the Formation of Legislation). Because EAL is a method that uses economic concepts and theories to understand law through its various impacts on society,[3] RIA is the implementation of a series of analytical process that aims to answer several related issues[4], which are government's urgency

[3]Maria GS Soetopo Conboy, 2022, Law and National Economic Development: Collection of Writings and Thoughts 2014-2021, Jakarta: Diadit Media, p.27.

[4]Andreja Marušić and Branko Radulović, 2011, Regulatory Impact Analysis (RIA) Manual, Podgorica: USAID – Good Governance Activity in Montenegro, p.5.

to intervene through laws and regulations; and the best option to overcome the problems that exist in society.

There is an obligation to implement RIA based on the formulation of the explanation and Appendix I of Law No. 13 of 2022, which requires various ministries and institutions to adapt to developments. Such conditions have an impact on fulfilling the principle of clarity of formulation contained in the provisions of Article 5 letter f of the Law on the Formation of Legislation, bearing in mind that the existing ministries and institutions as of yet do not possess a uniform understanding of how RIA is carried out. This resulted in the emergence of divergent interpretations of RIA as a tool for policy making, as follows:

1) Suboptimal implementation of RIA;
2) Insuficient Ministries and Institutions implementing RIA in the policy-making process;
3) Lack of achievement of several national development targets as stated in the 2020-2024 National Medium-Term Development Plan, particularly related to trade, financial services, inflation and taxation in relation to the growth of the Gross Domestic Product (GDP).

The mentioned problems culminated into the inadequate EAL implementation to assist in improving the quality of Indonesian laws and regulations within the decision-making process. This signifies that the purpose of Law No. 13 of 2022 as stated in the Considering Preamble letter b is unable to be realized. This instigates further challenges in achieving the goals of the State as stipulated in several laws and regulations, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution), especially the Fourth Paragraph of the Preamble and the provisions of Article 33 Paragraph (4), Law on the National Long Term Development Plan and Presidential Regulation on the National Medium-Term Development Plan.

Inability to achieve the objective of Law No. 13 of 2022 has an impact on the ability of laws and regulations to mitigate various risks. This underlines the need for a study to be conducted to support the implementation of EAL through the use of RIA based on Law No. 13 of 2022. The aim is to provide legal certainty in the regulatory making process to determine the impact on improving the overall quality of laws and regulations. This article is prepared using Gustav Radbruch's basic legal theory and Lawrence Friedman's legal system theory as the analytical tool.

2. Research Method

The methodology used in this legal research is a normative juridical method[5] which is carried out through two main approaches: statutory approach and historical approach. The statutory approach is utilized by examining laws and regulations[6] related to the use of EAL through RIA and CBA in the Indonesian legal system. Meanwhile, a historical approach is taken by tracing the history of the regulation and implementation of RIA and CBA in the Indonesian legal system. The research materials used include primary legal materials, secondary legal materials, and non-legal materials[7].

3. Discussion

1) Use of RIA and CBA in the Development of Indonesian Laws and Regulations

The discussion regarding the use of RIA as a tool in making laws and regulations is closely related to the concept of law as a formal policy[8]. As RIA aims to prevent the birth of unnecessary policies[9] and minimize the negative impact of policies on society[10], the scope of RIA is not limited to only making decisions in the regulatory making process, but also to determine how the regulations are implemented.

Several laws have been noted to have accommodated the concept of EAL since 2002, which among others include Government Regulation No. 14 of 2002 concerning Plant Quarantine, Regulation of the Minister of Forestry No.32/KPTS-II/2003 concerning Establishment of Business Permits for the Utilization of Timber Forest Products in Natural Forests or Plantation Forests through Bidding in Tenders, and Financial Services Authority Regulation No. 38/POJK.03/2016 concerning Implementation of Risk Management in the Use of Information Technology by Commercial Banks. Like RIA, CBA is considered as one of the EAL tools designed to

[5]Salim HS dan Erlies Septiana Nurbani, 2014, Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajawali Press, p.13; Lany Ramli, 2005, Legal Research Methods *(Part I), ed.* Valerine JL Kriekhoff, Jakarta: Post Graduate Program, Faculty of Law - University of Indonesia, p.106.

[6]Peter Mahmud Marzuki, 2010, Legal Research, Jakarta: Kencana, p.93-95.

[7]Salim HS, Erlies Septiana Nurbani, *Op. Cit.*, p.16; CFG Sunaryati Hartono, 2006, Legal Research in Indonesia at the End of the 20th Century, Bandung: Alumni, p.151.

[8] Riant Nugroho, 2018, Public Policy: Public Policy Dynamics, Public Policy Analysis, Public Policy Management, Public Policy Ethics, Jakarta: Elex Media Komputindo, p.149.

[9]Evgeniy Anatolyevich Postnikov, Danila Valeryevich Valko, and Maksim Vladimirovich Kondratov, "The Effect of the Regulatory Impact Procedure in the Russian Regions", Proceedings of 2nd International Scientific Conference on 'Competitive, Sustainable and Safe Development of the Regional Economy' (CSSDRE 2019), Atlantis Press, Dordrecht, 2019, p.239

[10]Marina Ivanova, Victoria Degtereva, and Alexander Gorovoy, "Ex Ante and Ex Post Regulatory Impact Assessment in Russia: Framework and Practice," 30th IBIMA Conference, International Business Information Management Association, Madrid, November 2017, p.1

evaluate policies or policy plans in order to determine the allocation of resources[11]. In its capacity as an analytical method, CBA analyzes the impact of a policy on all members of society, expressed in qualitative, quantitative, and monetized manners[12], to assist the decision-making process[13]. The implementation can be carried out independently or within a RIA unit[14].

The steps of RIA are as follows: (1) identify the problem, (2) determine the goal, (3) determine options to overcome the identified problems, (4) analyze impacts of each option, (5) compare the costs and benefits of each option, and (6) describe the regulatory implementation and supervision.[15] The mentioned steps are in line with William Dunn's view of policy analysis stages, which are forecasting, recommendation, evaluation and monitoring.[16] Through this analysis stage, the use of EAL through CBA and RIA is carried out in evaluating, forecasting and formulating recommendations through ex-post and ex-ante studies. Ex-post analysis aims to evaluate policies that have been implemented, whilst ex-ante analysis aims to analyze policy proposals.[17]

The use of EAL in policy making was initially limited and sectoral. However, since the beginning of 2013, EAL implementation began to expand. Its expansion can be seen through the regulation of the Minister of Tourism and Creative Economy No. PM.64/HK.201/MPEK/2013 of 2013 concerning Amendments to the Regulation of the Minister of Tourism and Creative Economy No. PM.01/HK.201/MPEK/2013 concerning Procedures for Forming Legislation within the Ministry of Tourism and Creative Economy, where Article 24A Paragraph (3) states that it requires submission of the progress of policy implementation through an executive summary which at least contains, background information, legal basis, action plan/CBA, and a proposed policy execution period. Similar efforts were also made by several other ministries and institutions for example, the Ministry of National Development Planning/National Development Planning Agency (Ministry of PPN/BAPPENAS) in 2014 issued Implementation Guidelines No.1/JUKLAK/SESMEN/02/2014

[11]Gerald J. Miller and Donijo Robbins, 2014, Handbook of Public Policy Analysis: Theory, Politics and Methods, trans. Imam Baihaqi, Bandung: Nusamedia, p. 650.

[12]Anthony E. Boardman, *et. al.*, 2011, Cost-Benefit Analysis: Concept and Practice, New Jersey: Pearson Education Inc., p.2.

[13]Diana Fuguitt and Shanton J. Wilcox, 1999, Cost-Benefit Analysis for Public Sector Decision Makers, Connecticut: Quorum Books, p.1.

[14]Andreja Marušić and Branko Radulović, 2011, Regulatory Impact Analysis (RIA) Manual, Podgorica: USAID – Good Governance Activity in Montenegro, p.24-26.

[15]Expert Staff of the Ministry of PPN/BAPPENAS for the Institutional Sector of the Ministry of PPN/BAPPENAS, Pelita Harapan University – Institute for Economic Analysis of Law and Policy, "Regulatory Reform: Impact Analysis of MSME Policy for Economic Development", Activity Report, Ministry of PPN/BAPPENAS, Jakarta, 2018, p.23-28.

[16]Ardansyah Tomi, "*Public Policy*", available on website https://foresteract.com/kebijakan-public/, accessed March 3rd, 2023.

[17]Anthony E. Boardman, *et. al., Op. Cit.*, p.3.

concerning Planning, Implementation, Reporting, Monitoring and Evaluation of Activities and Budget in the Ministry of PPN/BAPPENAS and Regulation of the Ministry of PPN/BAPPENAS No. 1 of 2017 concerning Guidelines for Evaluation of National Development.

The implementation of EAL by using RIA and CBA in making policies and legislation has broadly started since the issuance of Presidential Instruction No. 7 of 2017 concerning Formulation, Supervision, and Monitoring of Policy Implementation in Ministries and Non-ministerial Government Institutions. Through this, the President obliges all ministries and institutions to carry out policy impact analysis before formulating and stipulating policies. This policy was then followed up by the Cabinet Secretary Regulation No. 1 of 2018 concerning Guidelines for the Preparation, Implementation and Follow-Up of Cabinet Meeting Results. Through this regulation it states that CBA and RIA can be the methods used to carry out risk or impact analysis. The obligation to apply EAL was further emphasized by the issuance of several laws and regulations, among them are Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011, Government Regulation No. 63 of 2019 concerning Government Investment, Presidential Regulation No. 61 of 2019 concerning Government Work Plans for 2020, Regulation of the Ministry of PPN/BAPPENAS No. 5 of 2019 concerning Procedures for Compiling Strategic Plans for Ministries/ Institutions for 2020-2024, Presidential Regulation No. 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan, and Ministry of Cooperatives and Small and Medium Enterprises (SMEs) Regulation No. 3 of 2022 regarding Procedures for Forming Legal Products within the Ministry of Cooperatives and SMEs, and Law No. 13 of 2022.

As previously noted, numerous problems caused inability of various regulations to fully support the implementation of EAL in the making of laws and regulations. This is reflected in several assessments from international institutions, such as the Heritage Foundation, the World Bank and the Regulatory Quality Index as follows:

Table 1.
Indonesia in Heritage Economic Freedom

Indicator	Year					Information
	2018	2019	2020	2021	2022	
Business Freedom	57.3	69.3	70	71.3	66.6	*Moderately Free*
Labor Freedom	49.3	49.2	49.2	49.3	59.3	*Mostly Unfree*
Monetary Freedom	81.6	77.4	78.4	79	80.3	*Mostly Free*
Peringkat Umum	**69 /186**	**56/186**	**54/186**	**56/186**	**63/186**	

Source: Heritage Foundation, Processed

Table 2.
Indonesia in the Global Indicators of Regulatory Governance

Criteria	Score (2018)
Transparency of Rulemaking	3.25
Public Consultation	
Impact Assessment	
Accessing Laws and Regulations	
Ex-Post Reviews	
Challenging Regulations	

Source: World Bank (Processed)

Table 3.
Indonesia in the Regulatory Quality Index

2017	2018	2019	2020	2021
0.04	-0.01	0.04	0.23	0.30
Indonesia's ranking in 2021 is 67 out of 192 countries				

Source: World Bank (Processed)

The various assessments above show that Indonesia is currently in a better position because it is above the average score from other countries, in terms of policy making. However, these achievements are not fully maximized because there are still index indicators that have not been optimized. Examples include the business freedom indicator on the Heritage Economic Freedom Index and the results of assessments towards Indonesia, which is still below 2.5 on the Regulatory Quality Index. In addition, several problems in EAL implementation that have not been solved by the various laws and regulations also have hampering effects in various national development goals. This can be clearly seen in the target of Chapter 2 of the RPJMN, namely Strengthening the Pillars of Growth and Economic Competitiveness as follows:

Table 4.
Development Targets for 2024 and Current Achievements

No	Target	Baseline	Achievements			Target
		2019	2020	2021	2022*	2024
1	Trade Balance (USD Billion)	-3.1	21.62	35.41	50.59	15
2	Growth of Real Exports of Goods and Services (%)	-1.2	-8.14	24.04	21.64	6.2
3	Growth of Non-Oil and Gas Exports (%)	-5.7	-0.61	29.36	30.62	9.8
4	Financial Services Sector Contribution to GDP (%)	4.2	4.51	4.34	4.01	4.4

5	Ratio of M2 to GDP (%)	38.9	44.7	46.37	53.62	43.2
6	Inflation Rate (%)	3.1	1.68	1.87	5.42	3.5
7	Tax Ratio to GDP (%)	9.6	8.33	9.11	10.4	10.7 – 12.3
8	Government Securities *Yield (%)*	7.3	5.94	6.36	6.92	Down

* Data Until November 2022
Source: RPJMN 2020-2024, Bank Indonesia (Processed)

The suboptimality of EAL implementation has induced the role of laws and regulations in achieving various 2020-2024 national development targets above, prominently in several indicators, such as the contribution of the financial services sector to GDP, inflation rate, and ratio of taxation to GDP. The current global economic conditions indeed play a positive role in supporting the achievement of the various development targets above. However, this support is only part of a solution. Hence, a quality policy role is required to mitigate various challenges in the future.

2) Economic Analysis of Law and Policy Makers Capacity

Although the widespread use of EAL has only been carried out after the issuance of Presidential Regulation No. 7 of 2017, only several ministries and institutions have issued laws and regulations to support the use of EAL internally. This is understandable because prior to the issuance of Presidential Instruction No. 7 of 2017, the implementation of EAL through CBA and RIA had already been carried out in the ministry, through workshops and seminars carried out by experts from various disciplines[18]. In addition, discussions on EAL have also been carried out through several publications, among them:[19]

1) Speech entitled "*Economic Approach to Law as a Means of Returning Legal Authority"* delivered by Ch. Himawan in 1991;
2) Speech entitled "*Economic Approach to Law*" delivered by Chatamarrasyid Ais in 2003;
3) Book entitled "*Economic Approach to Law: Theory and Implications of Its Application in Law Enforcement*" by Johnny Ibrahim in 2010;

The issuance of Cabinet Secretary Regulation No. 1 of 2018 followed by Presidential Regulation No. 18 of 2020, Law No. 15 of 2019 and Law No. 13 of 2022 further

[18]Pelita Harapan University, "Brief Review of Economic Analysis of Law (EAL) Activities," *Report*, Pelita Harapan University – Institute for Economic Analysis of Law and Policy, Jakarta, 2020; Center for Legal and Economic Policy Analysis, "*LEAF Activities*", available on website http://pakhe.co.id/?page_id=647 , accessed January 30th, 2023.

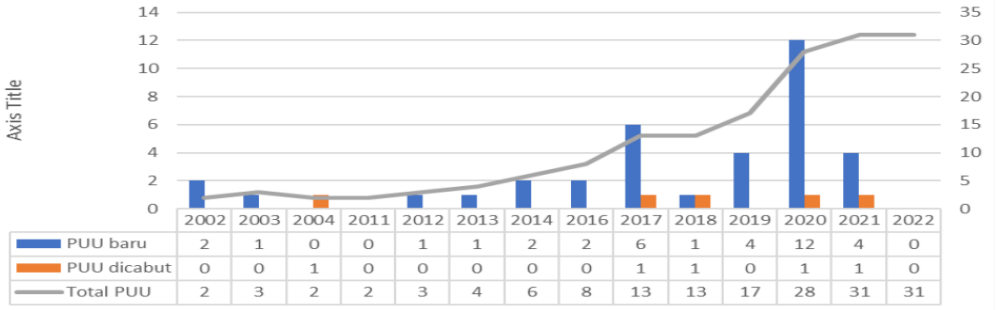
[19]Maria GS Soetopo, 2015, Indonesia Getting Its Second Wind: Law and Economics for Welfare Maximization, Jakarta: Gramedia Pustaka Utama.

emphasizes the role of CBA and RIA in policy making. Various regulations were issued as part of the legal effort to encourage the use of EAL in aspects of the legal structure, especially by legal drafter personnel in various ministries and institutions. An example of this is seen in several regulations issued since 2020, such as Minister of Law and Human Rights Regulation No. 33 of 2020 concerning the Strategic Plan of the Ministry of Law and Human Rights for 2020 – 2024. These various regulations include EAL as part of the mandatory skills that need to be possessed by personnel who occupy a number of positions within Ministries and Institutions.

3) Implementation of Economic Analysis of Law in Policy Making

The number of laws and regulations regarding the implementation of EAL shows the amount of support from the Government and various Institutions in the implementation of EAL in Indonesia. Until 2022, there are at least 31 regulations governing the use of EAL in policy making, as follows:[20]

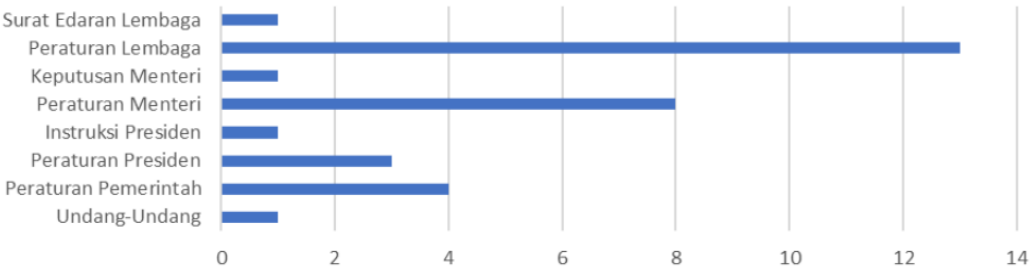
Figure 2.
Development of Laws and Regulations (PUU) Related to EAL



	2002	2003	2004	2011	2012	2013	2014	2016	2017	2018	2019	2020	2021	2022
PUU baru	2	1	0	0	1	1	2	2	6	1	4	12	4	0
PUU dicabut	0	0	1	0	0	0	0	0	1	1	0	1	1	0
Total PUU	2	3	2	2	3	4	6	8	13	13	17	28	31	31

Source: Center for Economic Analysis of Law and Policy

Figure 3.
Details of Legislation Related to EAL by Type



	Undang-Undang	Peraturan Pemerintah	Peraturan Presiden	Instruksi Presiden	Peraturan Menteri	Keputusan Menteri	Peraturan Lembaga	Surat Edaran Lembaga
Series1	1	4	3	1	8	1	13	1

Source: Center for Legal and Economic Policy Analysis

[20]Maria GS Soetopo, "Procedures for Regulatory Impact Assessment (RIA) in Forming Legislation," Presentation at the Ministry of Cooperatives and SMEs, 4 November 2022, Center for Legal and Economic Policy Analysis, Jakarta, 2022, p.20.

It can be seen above that the implementation of EAL through the use of RIA and CBA is mostly regulated through ministrial or institutional regulations. However, not all ministries and institutions have implemented such approach. Some policy-making personnel in ministries and institutions have not even heard of the concept of EAL in carrying out their duties and authorities, which is caused by several factors. Firstly, there is no single institution that controls the implementation of EAL in making policies. Secondly, there are no general guidelines that can be used by every ministry and institution in preparing EAL guidelines within their institutions. Thirdly, the limited capacity of ministry and institution personnel to carry out the mandate of laws and regulations, particularly in analyzing economic, budgetary, environmental and social impacts, which are the stages of analysis in a RIA and CBA study. The various problems demonstrate that the use of EAL is still constrained by various aspects that make up the Indonesian legal system.

4) The role of Law Substance in Supporting Legal Certainty in Economic Analysis of Law in the Policy Making Process

From the perspective of legal substance, it must be acknowledged that various laws and regulations that require the implementation of EAL currently only mention the use of CBA and RIA in policy making. The absence of specific explanations on how to carry out CBA and RIA in the process raises various hereditary problems, due to the following:

1) Without clear arrangements regarding procedures for preparation, the implementation of CBA and RIA can be carried out freely, giving rise to multiple interpretations among policy makers.
2) Although EAL dissemination through CBA and RIA has been carried out by various legal and policy experts, the implementation can be done in various ways. Each expert and institution, in general will have differences in terms of emphasis and method of preparation, although there are similarities. This condition has the potential to raise doubts for policy makers in understanding CBA and RIA as an analytical method and instrument.

These various problems indicate that there legal certainty problems from the implementation of RIA and CBA. To overcome this, several ministries and institutions have issued technical guidelines for conducting analysis. The Cabinet Secretariat, for example, in 2018 has elaborated several RIA and CBA components in the Policy Plan Working Paper as stated in Cabinet Secretary Regulation No. 1 of 2018. The Ministry of PPN/BAPPENAS has even included procedures for implementing CBA in its publication entitled "National Strategy for Regulatory

Reform: Creating Simple and Orderly Regulations" in 2016[21], before being further developed in a number of other publications. However, from various guidelines and existing laws and regulations, current implementations of RIA and CBA is still sectoral. Such conditions indicate that there are differences of opinion which. In fact, the Appendix to Law No. 13 of 2022 has now explicitly included RIA as part of the formal requirements for making laws and regulations[22]. The problem of legal certainty due to the absence of RIA and CBA in policy making lies, among others, in the legal absence and overlapping regulation. Legal effort needs to be taken, such as issuing a Presidential Regulation regarding the procedures for conducting RIA and CBA, as well as issuing implementing regulations for Law No. 13 of 2022, which specifically regulates the procedure for conducting RIA and CBA in general. The presence of such implementing regulations is expected to accomplish the following:

1) Initiate the process of harmonization of regulations and guidelines for the preparation of RIA and CBA in each Ministry and Institution;
2) Align perceptions, perspectives, and principles of RIA and CBA implementation in policy making within Ministries and Institutions;
3) Become a guideline for each Ministry and Institution in preparing guidelines for the procedures for conducting RIA and CBA within their respective institutions; and
4) Accelerate the process of institutionalizing EAL through RIA and CBA instruments through respective Ministries and Institutions.

The issuance of implementing regulations for Law No. 13 of 2022 can certainly strengthen legal certainty in the preparation of RIA and CBA in the policy-making process. Such regulation can be issued in the form of a Presidential Regulation such as Presidential Regulation No. 87 of 2014 concerning Formation of Legislation *jo.* Presidential Regulation No. 76 of 2021 concerning Amendments to Presidential Regulation No. 87 of 2014.

5) The role of Structure and Legal Culture in Supporting Legal Certainty in Economic Analysis of Law in the Policy Making Process

One of the obstacles in the implementation of RIA and CBA is the limited capacity of policy makers to implement the two EAL instruments in policy formulation, in which the obstacles include heavy workload, higher costs for policy making and inconsistency in the formation of RIA and CBA used in policy making. Regulatory inconsistencies can be solved by harmonization of laws and regulations.

[21]Ministry of PPN/BAPPENAS, 2016, National Strategy for Regulatory Reform: Realizing Simple and Orderly Regulations, Jakarta: Ministry of PPN/BAPPENAS, p.78-86.

[22]Anthony E. Boardman, et. al., 2018, Cost Benefit Analysis: Concepts and Practice, London: Cambridge University Press, p.3.

However, to overcome problems related to heavy workload and high costs, an internal reorganization of Ministries and Institutions needs to be carried out by:

1) Establishing RIA Desk specifically tasked with conducting RIA and CBA analysis in policy formulation; or
2) Reformulation of the structure of the legal divison by including an economist to assist the analytical process in making regulations; or
3) Expand cooperation with policy experts from universities and institutions who have competence in EAL for policy making.

In carrying out the various efforts above, the role of leaders and the political will from the Government, especially ministers and heads of institutions are needed. The fact that RIA is explicitly stated in the explanation and Appendix I of Law No. 13 of 2022 shows that EAL has become part of the formal requirements for the formation of laws and regulations. Therefore, the Constitutional Court and the Supreme Court can annul a regulation if the drafting process does not involve a RIA analysis. Furthermore, a monitoring mechanism to control the policy-making process also needs to be conducted. Supervision can be carried out internally or externally. For internal supervision, these efforts can be carried out by the respective ministries and institutions. However, in the external context, it is necessary to define who will conduct such matters, bearing in mind that this is related to the Government's plan to establish a National Regulatory Body based on Law No. 15 of 2019. Meanwhile, to overcome the high costs of formulating policies, it is necessary to strengthen the legal structure by improving the functions of the National Legal Documentation and Information Network, as well as the database of ministries and institutions. Apart from that, the preparation of RIA and CBA can also be supported by the development of digital systems to simplify the process.

4. Conclusion

The implementation of EAL, through RIA and CBA, has been carried out by the Government through various laws and regulations. However, these efforts have not yet provided legal certainty because the implementation of RIA and CBA is currently not supported by implementing regulations of Law No. 13 of 2022, which specifically regulates the procedures for its implementation. There is also the issue of substantial workload, limited capacity of policy makers, and the high cost of making policies. Therefore, strengthening legal certainty needs to be carried out by the following methods:

1) Issuing implementing regulations for the Law on the Formation of Legislation that regulate specific procedures for RIA implementation;

2) Increase the capacity of policy makers in carrying out RIA and CBA within each ministry and institution; and
3) Carrying out various supporting policies such as reorganizing Ministries and Institutions, providing supporting infrastructure, and optimizing an internal and external oversight role.

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